Supreme Court, U.S.
FILED

No. 98 645 AUG 17 1998

In The

Supreme Court of the United States

October Term, 1998

SHELDON LAMAR HUNT
SPECIALIST, USAR,

Petitioner,

v.

SCOTT L. ARMBRISTER, LT COLONEL
DAVID CANNON, CAPTAIN, USA,
CALVIN GLENN, SGT, USA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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155 pp

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Third Circuit erred when it affirmed the District Court's dismissal with prejudice of an employment discrimination action considering that the issues the Petitioner raised to the Court of Appeals did not involve employment discrimination, but rather the Respondents' failure to follow Military Rules and Regulations regarding the United States Army Officer Candidate School's Recycle Policy involving written notice and the opportunity to be heard, all causing substantial harm and undue prejudice to the Petitioner.

2. Whether the District Court committed legal error in granting the Respondents' Motion to Dismiss, under lack of subject matter jurisdiction, rule 12(b)(1) even absent exhaustion of administrative remedies, when the military violated Recycle Rules and Regulations regarding the Petitioner's Recycle appeal rights.

3. Whether the District Court committed legal error in granting the Respondents' Motion to Dismiss, under failure to state a claim, when the Respondents failed to notify the Petitioner in writing of his "proposed" Recycle, as required by Army Regulation (AR) 140-50 (Update) § 4-3, Issue No. 23/1 September 1994 and United States Army Infantry School (U.S.A.I.S.) Regulation 351-14 § 3, dated 30 November 1988, in direct violation of the Respondents' right of due process, notice and the opportunity to be heard, resulting in substantial harm and undue prejudice.

QUESTIONS PRESENTED – Continued

4. Whether the after-discovered evidence, due process, surrounding the Petitioner's resignation from Officer Candidate School (O.C.S.) should be considered as an involuntary resignation, as the Petitioner was reasonably misled by his superiors when he experienced a significant degree of constructive force which resulted in his decision to resign under duress and untrue circumstances.

5. Whether the District Court's decision to dismiss the Petitioner's complaint with prejudice was an abuse of discretion, particularly since the Petitioner was proceeding *pro se*.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were the same as in the caption.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and memorandum opinion of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The judgment and memorandum opinion of the United States Court of Appeals for the Third Circuit filed March 23, 1998, is not reported. (App. 1). The order of the Third Circuit denying rehearing in banc filed May 19, 1998, is not reported. (App. 23). The bench opinion of the U.S. District Court for the District of New Jersey filed April 28, 1997, is not reported. (App. 5).

JURISDICTION

The decision of the U.S. Court of Appeals for the Third Circuit was entered on March 23, 1998. The U.S. Court of Appeals for the Third Circuit denied rehearing before the original panel on May 19, 1998. The time for filing a petition for writ of certiorari has been extended to October 16, 1998 by letter from the Office of the Clerk, Supreme Court of the United States in compliance with Rule 13. Jurisdiction was conferred on the United States District Court by 28 U.S.C. Section 1331, Federal question. Appellate Jurisdiction is conferred by 28 U.S.C. Section 1291, Final Decision of District Court. This Court's jurisdiction is invoked by 28 U.S.C. Section 1254(1) writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

MILITARY REGULATIONS

Army Regulation (AR) 140-50 (Update) § 4-3 issue No. 23/1 September 1994.

United States Army Infantry School (U.S.A.I.S.) Regulation 351-14 § 3, dated 30 November 1988.

STATEMENT OF THE CASE

This is a military case in which the Petitioner filed a civil action against the government for its failure to follow required military regulations, procedures and due process when notifying him of his recycle.

FACTUAL HISTORY

Petitioner, a member of the United States Army Reserve, was a student in the Army's Officer Candidate School (OCS) at Fort Benning, Georgia. He began training on June 18, 1995. Petitioner was assigned to the Third Platoon, B Company, 3d Battalion. The Teach-Assess Counsel (TAC) Officer for the Third Platoon was Captain (CPT) Charles Ogle, and his (TAC) Noncommissioned Officer (TAX NCO) was Sergeant First Class (SFC) Calvin Glenn. Ogle and Glenn trained and evaluated the 31 members of the Third Platoon.[1] Each of the 31 Officer

[1] Third Platoon is one of four platooms in B Company. B company has a total of 110-125 OC's. The commander of B Company was Captain David Cannon. B Company is one of two

Candidates (OCS) attended with the hope of earning a commission as a Second Lieutenant in the U.S. Army. Graduation from OCS was scheduled for September 22, 1995.

The OCS course is divided into 14 weeks. Petitioner completed approximately 90 percent of the OCS course. Petitioner's evaluations showed that the Petitioner had deficiencies in leadership. On September 8, 1995, approximately two weeks prior to the Petitioner's scheduled graduation, Petitioner was summoned to the office of Lieutenant Colonel Armbrister, the Commanding Officer, Department of the Army, Headquarters, 3rd Battalion (OCS), 11th Infantry, Fort Benning, GA, and *ordered directly to stop training*. Lt. Col. Armbrister told the Petitioner that he was being recycled and as a result he would no longer be considered part of the OCS class 4-95. On September 11, 1995, Captain David Cannon, Commander of B Company, was quoted as saying "Take your shit and you're moving to another building." He also reiterated the fact that the Petitioner was being recycled and told the Petitioner the reason was because he has a Masters degree in Education plus 30 credits and that he should be doing twice as much as the other individuals.

Petitioner, based on the reasonable belief that he was being recycled, chose, rather than to be recycled, for reasons he felt to be unfair, to resign from the OCS course. The Petitioner told Captain David Cannon of his wishes to resign. Following his discussion with Captain

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training companies. The overall commander of OCS is Lieutenant Colonel Scott Armbrister.

David Cannon later that same day, September 11, 1997, Sergeant First Class (SFC) Calvin Glenn, Noncommissioned Officer (TAC NCO), approached the Petitioner and escorted him into a supply room where the two of them were alone. The TAC NCO, SFC Glenn, then ordered the Petitioner to sign a voluntary resignation. Petitioner complied with SFC Glenn's orders, but before signing the resignation form chose from a list of reasons of resignation, "other". Petitioner then proceeded to write a detailed description of the reason he was choosing to resign. Upon receiving the Petitioner's signed form, SFC Glenn read the Petitioner's reason for resignation and informed the Petitioner that his resignation form was unacceptable, tearing it up in front of the Petitioner. Petitioner was then ordered to fill out another form, and for the reason of resignation he was ordered to check the box that coincided with "lack of commitment". Against his will, the Petitioner did as he was told. Petitioner was released from OCS on September 12, 1995, ten days prior to his scheduled graduation for the reason of "lack of commitment".

Six days later on September 18, 1995, Petitioner wrote a letter to the Inspector General's (IG) Office, alleging unfair treatment while attending OCS. The IG conducted an investigation and found most of the Petitioner's allegations unsubstantiated, but it was from the IG that the Petitioner first learned that the OCS failed to inform him of his opportunity to rebut the recycle action in writing, as required by the U.S. Army Infantry School for final disposition.

With further research, Petitioner found that not only did the manner in which he was informed that he would

be recommended for recycle violate his right to due process of law, but also that (SFC) Calvin Glenn and Lieutenant Colonel Armbrister did not have the proper authority to recycle him. The United States Army Regulation 351-14 states that before a recommendation for recycle is forwarded to the course convening authority, the student will be notified in writing of the contemplated action and the reasons for referral. Further, that he may submit a rebuttal of matter for consideration within 48 hours after receipt of notification. Significantly, (SFC) Calvin Glenn and Lieutenant Colonel Armbrister only had the authority to "recommend" his recycle.

On March 20, 1996, Petitioner wrote a letter to Major General Michael Hendrix, headquarters, U.S. Army Infantry Center, alleging that the recycling procedure, as applied to him, violated his due process rights.

On March 20, 1996, Petitioner received a letter from Lieutenant Colonel Armbrister which states, among other things, that the Petitioner's complaint initiated a review of the OCS's recycle policies and procedures.

On April 4, 1997, Petitioner received a letter from Michael A. Bingham, Colonel, U.S. Army, Chief of Staff, USAIS which informs the Petitioner that the (recycle appeal) procedures have been corrected.

REASONS FOR GRANTING THE WRIT

The Courts below have so far departed from accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. There are

special and important reasons for the Court to grant this Writ of Certiorari.

ARGUMENT 1: THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ERRED WHEN IT AFFIRMED THE DISTRICT COURT'S DISMISSAL WITH PREJUDICE OF AN EMPLOYMENT DISCRIMINATION ACTION CONSIDERING THAT THE ISSUES THE PETITIONER RAISED TO THE COURT OF APPEALS DID NOT INVOLVE EMPLOYMENT DISCRIMINATION, BUT RATHER THE RESPONDENTS' FAILURE TO FOLLOW MILITARY RULES AND REGULATIONS REGARDING THE UNITED STATES ARMY OFFICER CANDIDATE SCHOOL'S RECYCLE POLICY INVOLVING WRITTEN NOTICE AND THE OPPORTUNITY TO BE HEARD, ALL CAUSING SUBSTANTIAL HARM AND UNDUE PREJUDICE TO THE PETITIONER.

The Third Circuit did not address the issues that Petitioner's counsel raised on appeal. Argument 1 is predicated on Arguments 2 through 5 below.

ARGUMENT 2: THE COURT COMMITTED LEGAL ERROR IN GRANTING THE RESPONDENTS' MOTION TO DISMISS, UNDER LACK OF SUBJECT MATTER JURISDICTION, RULE 12(b)(1) EVEN ABSENT EXHAUSTION OF ADMINISTRATIVE REMEDIES, WHEN THE MILITARY VIOLATED RECYCLE RULES AND REGULATIONS REGARDING PETITIONER'S RECYCLE APPEAL RIGHTS.

Statutory Law:

This area of law is governed by 28 U.S.C. § 1331 which reads in pertinent part:

> § 1331. Federal question.
>
> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Military Rules and Regulations:

> United States Army Infantry School (U.S.A.I.S.) Regulation 351-14 § 3, dated 30 November 1988:
>
> 2. Procedures.
>
> a. Before a recommendation for a recycle action is forwarded to the Course convening Authority, the student will be notified in writing of the contemplated action and reason(s) for referral. The notification will advise the student that he may submit a rebuttal or matters for consideration within 48 hours after receipt of notification. The student will immediately

replay by endorsement or return comment, acknowledging receipt, and will indicate his intentions concerning rebuttal using the format shown at Appendix F, Figure F-7.

b. The student's chain of command will submit recommendations, along with the student's notification and response, and any other relevant evidence to the Course Convening Authority for final decision.

c. Recycle will be directed by the Course Convening Authority, using the format shown at Appendix F. Figure F-7.

Army Regulation (AR) 140-50 (Update) § 4-3, Issue No. 23/1 September 1994:

Relief and retention of candidates

a. Candidates attending OCS or OCRC who fail to demonstrate fitness for commissioned status will be relieved. School commandants (State adjutants general for ARNG OCS) or their designated representatives have relief authority. Each candidate's potential performance as a commissioned officer will be fully evaluated before relief (AR 351-5, para 5-13).

b. School commandants or their designated representatives will relieve candidates for –

(1) Disciplinary reasons.

(2) Deficiencies in leadership.

(3) Security reasons.

(4) Lack of motivation.

(5) Falsification or omission of facts on applications.

(6) Lack of adaptability.

(7) Honor code violations.

(8) Misconduct.

(9) Academic deficiencies.

(10) Disqualifying physical defects.

(11) Physical deficiency.

(12) Personal reasons. The school commandant or a designated representative will evaluate a candidate's request for relief for personal reasons. Members resigning without sufficient justification will be relieved for "lack of motivation." Sufficient justification will be determined by the school commandant or his or her designated representative.

c. School commandants will establish procedures for officer candidates to appeal a relief determination. This applies to candidates who have been relieved for one or more of the reasons listed in b(10) through (11) above. However, the provisions of AR 15-6 will not apply.

Case Law:

On review of military decisions, it is the limited duty of the federal courts to inquire whether action of military agency conforms to the law, or is instead arbitrary, capricious, or contrary to statutes and regulations governing that agency. *Blevins v. Orr*, 721 F.2d 1419, 1421 (D.C. Cir. 1983).

Absent any violation by the Air Force of statute or regulation in dividing colonel selection board, with alleged result of reducing number of promotion slots

available for eligible candidates, including plaintiff, federal courts would not undertake to second guess military with respect to overall manpower needs and promotion policies or to pass judgment on military policy concerns. *Id.* pp. 1419, 1422.

Federal court lacks jurisdiction to review discretionary judgments of military officers acting within the scope of their authority, but possesses jurisdiction to prevent violations of military regulations, an act of Congress, or the federal Constitution. *Mellinger v. Laird*, 339 F. Supp. 434, 439 (E.D. Pa. 1972).

No military order, whether discretionary or mandatory, may violate the Constitution, federal statute, or military regulation. *Id.* pp. 435, 439.

Whenever a litigant attacks a military order, and such attack is predicted on violation of regulations, federal court must review the questioned order itself, including any exercise of discretion, if such review is necessary to determine whether there is such a violation. *Id.* pp. 434, 439.

Court should not review internal military affairs in absence of allegation of deprivation of constitutional right or allegation that military has acted in violation of applicable statutes or its own regulations, and exhaustion of available intraservice corrective measures. *Mindes v. Seaman*, 453 F.2d 197, 201 (5th Cir. 1971).

United States District Court had jurisdiction in proceeding wherein plaintiff ready reservists sought a preliminary injunction ordering and directing defendants to transfer plaintiffs to standby reserve, where defendants

failed to follow statute and the Army's own regulation. *Hornstein v. Laird*, 327 F. Supp. 993, 996 (S.D. NY 1971)

Federal courts have jurisdiction to review claims which allege that the armed services have failed to follow the Army's own regulations. *Febus Nevarez v. Schlesinger*, 440 F. Supp. 741, 742, 743 (D. Puerto Rico 1977).

Where Army fails to follow its own regulations in ordering Army reservists into involuntary active duty, district court, upon petition of reservist, must reverse unless no prejudice has been caused to the reservist. *Id.* pp. 741, 742, 745.

Exhaustion of Administrative Remedies:

As exceptions to rule of strict application of exhaustion doctrine in military discharge cases, (1) only those remedies which provide genuine opportunity for adequate relief need be exhausted, (2) exhaustion is not required when petitioner may suffer irreparable injury if he is compelled to pursue administrative remedies, (3) doctrine will not apply when administrative appeal would be futile, (4) and precedents, if plaintiff has raised substantial constitutional question. *Von Hoffburg v. Alexander*, 615 F.2d 633 (5th Cir. 1980).

Administrative remedies before Board for Correction of Military Records should be exhausted unless party invoking court's jurisdiction can demonstrate special circumstances. *Sohm v. Fowler*, 365 F.2d 915 (D.C. Cir. 1966).

In the case at bar, the Respondents violated the recycle rules and regulations by failing to notify the Petitioner, in writing, of the contemplated action and reasons for referral for his recycle. As a result, the Petitioner was

never given an opportunity, as required by due process of law, to submit a rebuttal of matter for consideration within 48 hours after receipt of his recycle notification.

Under normal conditions, a Petitioner would have to exhaust administrative remedies before the District Court would consider the subject matter within its jurisdiction. There are circumstances, however, as listed in the above case law, that allow the district court to bypass the exhaustion of administrative remedies and bring the matter within its subject matter jurisdiction. In the instant case, if the court felt that the Petitioner's case did not fall within its subject matter jurisdiction because administrative remedies were not exhausted, then the proceedings should have been stayed, pending the outcome of the Petitioner's application and the decision of the ABCMR. If the court had deemed the proceedings stayed and the decision of the ABCSMR had not been favorable to the Petitioner, the Petitioner would then have had the opportunity to appeal to the district court under an arbitrary and capricious standard. In this case, the court's order prevents the Petitioner from having an opportunity to appeal a possible unfavorable ABCSMR decision which he is rightfully entitled to.

ARGUMENT 3: THE COURT COMMITTED LEGAL ERROR IN GRANTING THE RESPONDENTS' MOTION TO DISMISS, UNDER FAILURE TO STATE A CLAIM, RULE 12(b)(6) WHEN THE RESPONDENTS FAILED TO NOTIFY THE PETITIONER IN WRITING OF HIS RECYCLE, AS REQUIRED BY ARMY REGULATION (AR) 140-50 (UPDATE) § 3, DATED 30 NOVEMBER 1988, A DIRECT VIOLATION OF THE PETITIONER'S RIGHT OF DUE PROCESS, NOTICE AND THE OPPORTUNITY TO BE HEARD, RESULTING IN SUBSTANTIAL HARM AND UNDUE PREJUDICE.

Motions to dismiss because of failure to state a claim upon which relief can be granted are mere formal motions directed to the face of the complaint, and generally are not favored and should be granted sparingly and with caution only where it appears to a certainty that no set of facts could be proven at trial entitling a plaintiff to any relief. *Dann v. Studebaker-Packard Corp.*, 288 F.2d 201 (6th Cir. 1961).

Motions to dismiss complaint for failure to state a claim upon which relief can be granted are viewed with disfavor in federal courts because of possible waste of time in case of reversal of a dismissal of the action, and because primary objective of the law is to obtain a determination of the merits of any claim, and therefore a case

should be tried on the proofs rather than the pleadings. *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242 F.2d 208 (9th Cir. 1957).

Motion to dismiss for failure to state a claim is not favored and should rarely be granted, resolution on merits being preferred to disposition on technical grounds of failure to state a claim. *Airline Car Rental, Inc. v. Shreveport Airport Authority*, 667 F. Supp. 293 (W.D. La. 1986).

Where complaint is filed by an unrepresented litigant, court of appeals must, before affirming dismissal, find that it is clear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Zynn v. O'Donnell*, 688 F.2d 940 (3rd Cir. 1982).

In the case at bar, the District Court, in its opinion, stated the following (see App. 5):

The Government contends that Petitioner's voluntary resignation came before the recommendation for recycle was forwarded to the course convening authority. Hence, when Petitioner voluntarily resigned, he was no longer faced with a "recycle recommendation," to be followed by an official written "notice of Recycle Action," with an opportunity to rebut, but was processed as a voluntary resignation. Consequently, AR 315-14 and its requirement of written notice and a right to rebut was never triggered. Court Order and Opinion, dated April 28, 1997.

There are two material factual issues in dispute. First, whether the Petitioner's resignation can be considered voluntary due to the circumstances surrounding his case

(see Argument 4). Second, whether the Petitioner was improperly notified of his recycle, without written notice or the right to rebut.

In the instant case, there are sets of facts (listed above in the Statement of Case and Factual History) (*supra*, p. 2) that if proven at trial would entitle the Petitioner to relief. There is evidence that proves that the Petitioner's right of due process was denied. In support of the fact that the Petitioner did not receive the required written notification with the opportunity of making a rebuttal, the Inspector General (IG) in a letter to the Petitioner, states (see App. 40):

> Based on the inquiry it was determined that you were not afforded appropriate due process during the recycle process. United States Army Infantry School Regulation 351-14, Section III states that before a recommendation for recycle is forwarded to the course convening authority, the student will be notified in writing of the contemplated action and the reasons for referral. The notification will advise the student that he may submit a rebuttal of matters for consideration within 48 hours after receipt of notification. The student will immediately reply by endorsement, acknowledging receipt and will indicate his intentions concerning rebuttal. The chain of command will submit recommendations, the student's notification and response, and any other evidence to the course convening authority for final decision. Correspondence from John M. Dykes, Lt. Col. U.S. Army, Inspector General to Sheldon L. Hunt, dated February 5, 1996.

In addition to the IG's correspondence, the Petitioner also received correspondence from Lt. Colonel Armbrister, who addresses the recycle Appeal process where he speaks of revisions to the recycle appeal process (see App. 44):

> Although you decided to voluntarily drop from the course rather than recycle, your complaint initiated a review of our recycle policy. Effective 1 December 1995, the Recycle Appeal Policy was revised to bring the Officer Candidate School in line with the United States Army Infantry School and allows an appeal, in writing, to the Commander, 11th Infantry Regiment within 48 hours of intent to recycle. Correspondence from Scott L. Armbrister, Lieutenant Colonel, U.S. Army, Commanding Officer to Sheldon L. Hunt, dated 21 March 1996.

Furthermore, on the same subject, the USAIS, Chief of Staff wrote the following:

> Your letter was received as indicated in a phone conversation between yourself and Executive Officer, Major Russell, in March. You were also informed in the conversation that the case had been reviewed and the procedures corrected but the results were the same.

With the words of the IG, Lt. Col. Armbrister and Col. Bingham as evidence, the District Court's finding of fact, was in error and the Motion to Dismiss, under 12(b)(6) was improperly granted by the trial court.

ARGUMENT 4: THE AFTER DISCOVERED EVIDENCE, INVOLVING DUE PROCESS, SURROUNDING THE PETITIONER'S RESIGNATION FROM OFFICER CANDIDATE SCHOOL (OCS) CAN BE CONSIDERED AN INVOLUNTARY RESIGNATION, AS THE PETITIONER WAS REASONABLY MISLED BY HIS SUPERIORS AND EXPERIENCED A SIGNIFICANT DEGREE OF CONSTRUCTIVE FORCE THAT RESULTED IN THE PETITIONER'S MAKING A DECISION TO RESIGN UNDER DURESS AND UNTRUE CIRCUMSTANCES.

A voluntary act under normal conditions would suggest that the person making the voluntary act is aware of all the essential facts and consequences of their actions. Voluntary, as defined in Black's Law Dictionary and in the exemplified case law is as follows:

> The word, especially in statutes, often implies knowledge of essential facts; unimpelled by another's influence . . . *Black's Law Dictionary*, Fifth Edition, St. Paul, 1979, p. 1413.

> Employee is not required to show intent to deceive on part of agency in order for his retirement to be held involuntary, but rather, it is sufficient if employee shows that reasonable person would have been misled by agency statements. *Scharf v. Department of Air Force*, 710 F.2d 1572 (Fed.Cir. 1983). Employee is not required to show intent to deceive on part of agency in order for his retirement to be held involuntary, but rather, it is sufficient if employee shows that

> reasonable person would have been misled by agency statements. *Christie v. United States*, 518 F.2d 584, 587 (Ct.Cl. 1975).
>
> There are two situations in which a public employee's resignation will be considered involuntary, and thus a deprivation of due process: where employer force resignation by coercion or duress; or where employer obtain resignation by deceiving or misrepresenting material fact to employee. U.S.C.A. Const. Amend. 14. *Hargray v. City of Hallandale*, 57 F.3d 1561 (8th Cir. 1995).

In the case at bar, the Petitioner did not know all the essential facts surrounding the way in which he was to be notified of his recycle. The Petitioner became aware of the Appellees' violation of his due process, approximately 17 months after his resignation. Prior to the Petitioner's resignation, the Petitioner had been reasonably misled to believe that he had been recycled, when in fact this was not the case. The Petitioner was not notified, in writing, of his recycle, as required by the rules and regulations that govern the recycle process. The Petitioner, when verbally notified of his recycle, felt that the reasons he was being given for his recycle were unfair. It was the Petitioner's intent to dispute the recycle. Furthermore, it was the Petitioner's belief that a voluntary resignation would allow him the opportunity to rebut his recycle through administrative remedies.

As a result of the misinformation, the Petitioner received from his supervising officers, the Petitioner made, what he believed to be, a "voluntary" resignation. The fact of the matter is, by definition, the Petitioner did not make a "voluntary" resignation, as the Petitioner was

unaware of the essential facts surrounding the Respondents' case.

Voluntary is also defined in Black's Law Dictionary as:

> unimpelled by another's influence . . . *Black's Law Dictionary*, Fifth Edition, St. Paul, 1979, p. 1413.

Based on the above, the court should not have dismissed the Petitioner's complaint.

ARGUMENT 5: THE LOWER COURT'S DECISION TO DISMISS THE PETITIONER'S COMPLAINT WITH PREJUDICE WAS AN ABUSE OF DISCRETION PARTICULARLY SINCE THE PETITIONER WAS PROCEEDING *PRO SE*.

Dismissal of a complaint "with prejudice" for failure to state a claim upon which relief can be granted is a dismissal of the action and is appealable. *Stranger v. City of Santa Cruz*, 653 F.2d 1257 (9th Cir. 1981).

Federal District Court abuses its discretion when its decision rests upon clearly erroneous finding of fact, errant conclusion of law, or improper application of law, or improper application of law to fact. *Hofkin v. Provident Life & Acc. Ins. Co.*, 81 F.3d 365 (3rd Cir. 1996).

Decision to dismiss with prejudice is a harsh sanction, but the choice lies within discretionary power of District Court, and Court of Appeals will not reverse absent clear showing of abuse of discretion. *Craighead v. E.F. Hutton & Co., Inc.*, 899 F.2d 485 (6th Cir. 1990).

In the case at bar, the court's decision to dismiss the Petitioner's complaint under Rules 12(b)(1) and (6) rests upon clearly erroneous finding of fact when there are issues of material fact in dispute.

Furthermore, the Court of Appeals recognizes that a complaint filed *pro se* is to be held "to less stringent standards than formal pleadings drafted by lawyers," *Guerrero v. Hauck*, 502 F.2d 579, 580 (5th Cir. 1974).

> Dismissal with prejudice for failure to state claim should not be entered unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief, particularly when plaintiff is appearing pro se. *Id.* at 580.

With the facts presented, the lower court's decision to dismiss the Petitioner's complaint with prejudice was an abuse of discretion, particularly since the Petitioner was proceeding *pro se*.

CONCLUSION

Based on the above arguments, the Petitioner respectfully requests that the Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX 1

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5377

SHELDON LAMAR HUNT,
SPECIALIST, USAR

v.

SCOTT L. ARMBRISTER, LT. COLONEL;
DAVID CANNON, CAPTAIN, USA;
CALVIN GLENN, SGT., USA

Specialist Sheldon Lamar Hunt,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil Action No. 97-cv-00004
(Honorable Dickinson R. Debevoise)

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 10, 1998

Before: GREENBERG, SCIRICA and ALDISERT, *Circuit Judges*

(Filed MAR 23 1998)

MEMORANDUM OPINION

SCIRICA, *Circuit Judge.*

This is an appeal from the dismissal with prejudice of an employment discrimination action. We will affirm.

Sheldon Lamar Hunt was a student in the Army's Officer Candidate School at Fort Benning, Georgia. His instructors recommended that he recycle (repeat) the course because of his deficiencies in leadership ability. Before the recommendation was acted upon, Hunt voluntarily resigned from the school. Hunt has sued the three superior military officers who participated in the recycle recommendation and seeks as his sole relief $650,000 in damages.

The government moved to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and for failure to state a claim on which relief can be granted. As noted, the district court granted the motion.

With respect to Hunt's Title VII claim the district court held that Title VII does not apply to uniformed members of the military. *See Doe v. Garrett,* 903 F.2d 1455, 1461 (11th Cir. 1990), *cert. denied,* 499 U.S. 904 (1991). Even claims against military officers in their individual capacities are barred. *Chappel v. Wallace,* 462 U.S. 296, 304 (1983); *United States v. Stanley,* 483 U.S. 669 (1987).

To the extent Hunt alleged a procedural due process claim, the district court held that Hunt failed to establish he had been denied either a property or liberty interest

protected by the Fifth amendment. Nor could Hunt maintain a *Bivens* action for damages against the defendants in their individual capacities. Citing *Stanley* and *Chappel*, the district court held that Hunt, a uniformed member of the military, could not bring a constitutional tort claim against his superior officers.

Finally, the district court held that Hunt failed to overcome the presumption that his resignation was voluntary, rather than the result of duress or coercion. *See Christie v. United States*, 518 F.2d 584 (1975). Furthermore, although remarking that Hunt did not contest the basis for the recycle recommendation by his instructors, the district court noted that the record supported the reasonableness of that recommendation.

We see no error in any of these rulings.[1] For the foregoing reasons, we will affirm the judgment of dismissal with prejudice.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR

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[1] Hunt raises a new *claim* on appeal – lack of administrative exhaustion. Because he did not raise it before the district court, it is waived. Even if not waived, it is meritless.

34.1(a) on March 10, 1998. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this court that the judgment of the district court entered April 30, 1997, be, and the same is hereby affirmed.

Costs taxed against appellant.

ATTEST:

/s/ P. Douglas Sisk
P. Douglas Sisk, Clerk

DATED: MAR 23 1998

TO THE CLERK:

Please file the foregoing opinion.

/s/ Judge Scirica
Circuit Judge

DATED: MAR 23 1998

APPENDIX 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SPECIALIST SHELDON LAMAR HUNT, Plaintiff, v. LT. COLONEL SCOTT L. ARMBRISTER, et al., Defendants.	Civ. No. 97-4 (DRD) **ORDER** (Filed Apr. 28, 1997)

This matter having come before the Court on a motion of Faith S. Hochberg, United States Attorney for the District of New Jersey, (Susan C. Cassell, AUSA, appearing), attorney for defendants, for an order dismissing the complaint; and plaintiff, Sheldon Lamar Hunt, having appeared in opposition to the motion; and the Court having considered the matter, and the papers submitted by the parties, and for good cause shown;

IT IS, on this 28th day of April 1997, ORDERED that the defendants' motion is granted, and the action be and the same is hereby dismissed with prejudice.

/s/ Dickinson R. Debevoise
Dickinson R. Debevoise,
U.S.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SPECIALIST SHELDON LAMAR HUNT, PRO SE, Plaintiff, v. LT. COLONEL SCOTT L. ARMBRISTER, et al., Defendants.	Civ. No. 97-4 (DRD) **OPINION** (Filed Apr. 29, 1997)

Sheldon Lamar Hunt *Pro Se*
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Faith S. Hochberg
United States Attorney
By: Susan C. Cassell
Assistant U.S. Attorney
970 Broad Street, Room 700
Newark, New Jersey 07102

DEBEVOISE, Senior District Judge.

Plaintiff, Sheldon Lamar Hunt, a Specialist in the Army Reserve, brings this action alleging violations of Title VII of the Civil Rights Act of 1964 and the due process clause of the Fifth Amendment against Lt. Colonel Scott L. Armbrister, Captain David Cannon, and Sergeant Calvin Glenn. The defendants, who are assigned to

the Officers Candidate School at Fort Benning, Georgia, have moved to dismiss the complaint. For the following reasons set forth below the motion will be granted.

Background

Plaintiff, a member of the United States Army Reserve, was a student in the Army's Officer Candidate School (OCS) at Fort Benning, Georgia. He began training on June 18, 1995. Plaintiff was assigned to the Third Platoon, B Company, 3d Battalion. The Teach-Assess Counsel (TAC) Officer for the Third Platoon was Captain (CPT) Charles Ogle, and his (TAC) Noncommissioned Officer (TAC NCO) was Sergeant First Class (SFC) Calvin Glenn. Ogle and Glenn trained and evaluated the 31 members of Third Platoon.[1] Each of the 31 Officer Candidates (OCs) attended OCS with the hope of earning a commission as a Second Lieutenant in the U.S. Army. Graduation from OCS was scheduled for September 22, 1995.

The OCS course is divided into 14 weeks. After evaluating plaintiff's performance for approximately 10-11 weeks, on August 31, 1995, CPT Ogle recommended to CPT Cannon that plaintiff be recycled[2] into the following

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[1] Third Platoon is one of four platoons in B company. B company has a total of 110-125 OC's. The commander of B Company was Captain David Cannon. B Company is one of two training Companies. The overall commander of OCS is Lieutenant Colonel Scott Armbrister.

[2] As a "recycle", plaintiff would be given credit for all graduation requirements that he had, up until that point, successfully completed. He would be enrolled in the next OCS

OCS class. CPT Ogle's letter, in recommending plaintiff's recycling, listed a number of bases in support of his conclusion. They included plaintiff's consistently poor evaluations, particularly with regards to leadership skills, made by himself, SFC Glenn, and plaintiff's fellow OC's. After reviewing the recommendation of CPT Ogle, CPT Cannon concurred with CPT Ogle's decision to recommend plaintiff for recycle:

> SOC Hunt's training packet indicates that he is weak in the leadership competencies of technical and tactical proficiency and professional ethics. He has not been responsive to counseling and guidance and has not demonstrated an improvement in his performance or attitude. SOC Hunt also demonstrated an inability to follow instructions and accept accountability for his own actions.

The recommendation of CPT Ogle and the concurrence of CPT Cannon were sent to Lieutenant Colonel (LTC) Armbrister. However, before any official action was taken with regards to the recommendation to recycle plaintiff, plaintiff spoke with his superiors and decided to request a voluntary resignation, stating that he lacked the commitment necessary to complete the OCS Course. LTC Armbrister approved plaintiff's resignation and ordered that he be released from OCS and returned to his parent unit. Plaintiff was released from OCS on September 12, 1995, ten days prior to the scheduled graduation.

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class to be given additional opportunities to satisfy the requirements to graduate and earn a commission.

Six days later on September 18, 1995, plaintiff wrote a letter to Colonel John Lewis, commander of the 11th Infantry Regiment, requesting that he be permitted to graduate with his OCS class. This request was denied.

On October 30, 1995, plaintiff wrote a letter to the Inspector General's (IG) Office, alleging unfair treatment while attending OCS school. The IG conducted an investigation and found most of plaintiff's allegations unsubstantiated. The only allegation which the IG agreed had merit was that OCS failed to inform plaintiff of his opportunity to rebut the recycle action in writing as required by U.S. Army Infantry School regulation. The IG report was forwarded to the Infantry School for final disposition.

On November 1, 1995, plaintiff wrote a letter to Senator William Bradley requesting a congressional inquiry into the circumstances surrounding his release from OCS. In response to the requested inquiry Adjutant General of the Infantry Center, on January 9, 1996, explained that the primary reason plaintiff's superiors at OCS recommend his recycle was plaintiff's poor leadership skills.

On March 20, 1996 plaintiff wrote a letter to Major General Michael Hendrix, Headquarters U.S. Army Infantry Center, alleging that the recycling procedure as applied to him violated his due process rights.

In response, on March 29, 1996 the Chief of Staff, U.S. Army Infantry School informed plaintiff that he was satisfied with the IG report and believed that plaintiff had been treated fairly. The response concluded that plaintiff had been given the opportunity to speak on his own behalf regarding the decision to recommend his recycle. The response also pointed out that any deficiency in the

recycling procedure was lessened by plaintiff's decision to request voluntary relief from OCS. Further, that a voluntarily request for relief was acknowledged in writing by plaintiff and made his decision to leave OCS irrevocable.

DISCUSSION

Plaintiff contends that this court has jurisdiction to address his complaint based on the Army's "[f]ailure to provide equal opportunity of higher employment/promotion." This contention appears to be an allegation of employment discrimination pursuant to Title VII of the Civil Rights Act of 1964.[3] As such plaintiff's claim must be dismissed as Title VII does not apply to the military. Plaintiff also contends that his direct superiors at Fort Benning, LTC Ambrister, CPT Cannon, and SFC Glenn, "acted independently of the military for their own interest, not in the interest of the federal government" in violating plaintiff's right to due process of law. The alleged constitutional violation appears to stem from the procedures employed by plaintiff's superiors when plaintiff was informed that he would be recommended for recycle. The alleged constitutional violation is without merit. Finally, plaintiff appears to contend that he was

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[3] As the Government notes the plaintiff's complaint appears to allege jurisdiction based on employment discrimination. The Government responds to the complaint treating it as a Title VII action. This interpretation of plaintiff's complaint seems appropriate and indeed gains support by plaintiff's decision to cite *Stinson v. Hornsby*, 821 F.2d 1537 (11th Cir. 1987), a Title VII case, in his brief in opposition to the Government's motion to dismiss.

coerced into resigning from OCS after being told he would be recommended for recycle. This contention is equally without merit.

The Government moves to dismiss pursuant to *Fed.R.Civ.P.* 12(b)(1) and 12(b)(6) for lack of jurisdiction over the subject matter, and failure to state a claim upon which relief can be granted. It further moves to dismiss the claim against CPT Cannon, because it contends he was never served with a summons and complaint as required by *Rule* 12(b)(5).[4]

Title VII Claim

The United States is immune from suit unless waiver of sovereign immunity is unequivocally expressed. *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *United States v. King*, 395 U.S. 1, 4 (1969); *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

In this case the Government argues that as a uniformed member of the Army Reserve on active duty training, plaintiff cannot bring a Title VII action against the United States. Further, since the Government has not waived sovereign immunity the plaintiff's action for employment discrimination must be dismissed. As the Government points out every circuit court of appeals that has addressed the issue has held that Title VII is inapplicable to uniformed members of the military. *See Doe v.*

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[4] Because the complaint will be dismissed with prejudice pursuant to *Rules* 12(b)(1) and (6) the allegation that CPT Cannon was never served in accordance with *Rule* 4 will not be addressed.

Garrett, 903 F.2d 1455, 1461 (11th Cir. 1990), *cert. denied*, 499 U.S. 904 (1991); *Stinson v. Hornsby*, 821 F.2d 1537, 1541 (11th Cir. 1987), *cert. denied*, 488 U.S. 959 (1988); *Roper v. Department of Army*, 832 F.2d 247, 248 (2d Cir. 1987) ("[W]e refuse to extend a judicial remedy for alleged discrimination in civilian employment to the dissimilar employment context of the military, especially given the need for deference to the military in matters involving hierarchy and structure of command.") *Spain v. Ball*, 928 F.2d 61 (2d Cir. 1991); *Gonzalez v. Department of Army*, 718 F.2d 926, 927-29 (9th Cir. 1983); *Taylor v. Jones*, 653 F.2d 1193, 1200 (8th Cir. 1981); *Costner v. Oklahoma Army National Guard*, 833 F.2d 905 (10th Cir. 1987). Consequently, in order to bring an action against the United States military under Title VII, the United States would have to express its intent to waive immunity. This the Government has not done. In this case the alleged discriminatory conduct occurred while plaintiff was on active duty training as a member of the Army Reserve. Therefore, since the sovereign immunity afforded the United States military in regards to Title VII actions has not been waived the plaintiff's employment discrimination claim must be dismissed.

Even if plaintiff has brought suit against LTC Armbrister, CPT Cannon, and SFC Glenn in their individual capacities for a violation of Title VII this claim still must be dismissed. The Supreme Court has held that members of the military may not state a claim against their individual military superiors for constitutional violations. *United States v. Stanley*, 483 U.S. 669 (1987). As explained in *Chappel v. Wallace:*

> The special nature of military life – the need for unhesitating and decisive action by military officers and equally disciplined responses by enlisted personnel – would be undermined by a judicially created remedy exposing officers to personal liability at the hands of those they are charged to command.

462 U.S. 296, 304 (1983).

Due Process Claim

Although it is not entirely clear, plaintiff appears to allege in his brief in opposition to the Government's motion to dismiss, that LTC Armbrister, CPT Cannon, and SFC Glenn "were clearly working outside military regulations, so they had to be working autonomously" when they allegedly violated plaintiff's right to due process of law. Consequently, he contends, they should not have the protection of sovereign immunity. Plaintiff, also appears to contend that either the Government or individual members of the military acting under "color of law" have violated his right to due process.

Plaintiff believes that the manner in which he was informed that he would be recommended for recycle violated his right to due process of law. Specifically, plaintiff contends that on September 8, 1995 he was informed orally that he would be recommended for recycle. Plaintiff contends that this manner of informing him that he would be recommended for recycle, is in contravention of United States Army Regulation 351-14 ("AR 351-14"). This regulation requires that before a recommendation for recycle, is forwarded to the course convening authority, the student will be notified in writing of

the contemplated action and the reasons for referral. Further, that he may submit a rebuttal of matter for consideration within 48 hours after receipt of notification.

Plaintiff further contends that after being verbally informed of the recycle recommendation he was coerced into giving as his official reason for resigning "lack of commitment" toward the completion of OCS.[5]

The Government contends that plaintiff's voluntary, resignation came before the recommendation for recycle as forwarded to the course convening authority. Hence, when plaintiff voluntarily resigned, he was no longer faced with a "recycle recommendation," to be followed by an official written "Notice of Recycle Action," with an opportunity to rebut, but was processed as a voluntary resignation. Consequently, AR 315-14 and its requirement of written notice and a right to rebut was never triggered.

As for the question whether plaintiff voluntarily resigned from OCS or was coerced, the Government notes that the September 11, 1995 form entitled "Request for Disposition Prior to Graduation," which plaintiff signed, specifically states, at paragraph 4, "I make this statement freely and without coercion." Therefore, the government

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[5] It is not clear whether plaintiff claims that his resignation was made under duress or whether plaintiff's allegation is limited to him being coerced into checking "lack of commitment" as the basis for his resignation on the "Request for Disposition Prior to Graduation." A review of the record suggests that plaintiff believes he was coerced into resigning from OCS, not merely that he was coerced into choosing "lack of commitment" as the official reason for his resignation. Therefore, given the record and plaintiff's status as pro se the more serious charge of involuntary resignation will be addressed.

contends, plaintiff was not coerced into resigning from OCS.

In order to invoke the protection of procedural due process, plaintiff must first establish that he has been deprived of a constitutionally protected property or liberty interest. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972); *Perry v. Sinderman*, 408 U.S. 593 (1972). Courts have consistently held that there is no constitutional right to serve in the armed forces. Therefore, plaintiff does not have a property interest in attendance at OCS. *West v. Brown*, 558 F.2d 575, 760 (5th Cir. 1977), *cert. denied*, 435 U.S. 926 (1977). *Accord, Nieszner v. Mark*, 684 F.2d 562, 564 (8th Cir. 1982).

Further, plaintiff has failed to establish that he has been denied a liberty interest protected by the Fifth Amendment. *See Board of Regents v. Roth*, 408 U.S. 564, 573-74 (1972). Plaintiff has not alleged that the actions of his superiors "might seriously damage his standing and associations in the community," or otherwise "impose[ ] on him a stigma or other disability that foreclose[s] his freedom to take advantage of other employment opportunities." *Id.* at 573-75. Nor has plaintiff shown that those charges were made public by his employer, *Bishop v. Wood*, 426 U.S. 341, 348-49 (1976), or that the charges were false, *See Codd v. Velger*, 429 U.S. 624, 672 (1977). Further, "dismissal from a specific position or foreclosure from engaging in one particular form of government employment is not a deprivation of a liberty interest. *Karr v. Castle*, 768 F.Supp. 1087, 1098 (D.Del. 1991) *aff'd.* 22 F3d 303 (3rd Cir. 1994) *cert. denied* 513 U.S. 1084 (1995) (citing 2 R. Rotunda, J. Nowak & J. Young, *Treatise on Constitutional Law*, § 17.4 at 228 (1986).

Plaintiff has not only failed to allege that the actions of his superiors at OCS implicated a liberty interest, he has also apparently overlooked a letter dated September 1996, from the Department of Army Chief of Staff, informing plaintiff that his "decision to leave OCS before completing the requirements for commissioning does not prevent [him] from reapplying to attend the OCS program and earn a commission." Thus, far from damaging plaintiff's reputation in the community or closing doors to future employment, the Army has provided plaintiff a reasonable means of seeking a commission.

Therefore, because plaintiffs has failed to establish that he has been denied either a property or liberty interest protected by the Fifth Amendment, "the question of what process is required and whether any provided could be adequate in the particular factual context is irrelevant, for the constitutional right to 'due process' is simply not implicated." *Stone v. University of Maryland*, 855 F.2d 167, 172 (4th Cir. 1988). Thus, plaintiff's failure to establish a denial of procedural due process makes irrelevant any factual inquiry into whether plaintiff's resignation came before the requirements of AR 315-14 were triggered.

Even if plaintiff's allegations implicated an interest protected by the due process clause, "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961).

Further, even if plaintiff could show that the defendants acted beyond the scope of their employment when they informed him of their decision to recommend his

recycle, an action based on a violation of due process of law implicating them as private litigants is impermissible. Under the due process clause of the Fifth Amendment "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . " U.S. Const. Amend. V. As the Supreme Court has made clear the Fifth Amendment applies to actions of the federal government, not those of private individuals. *Public Utilities v. Commission v. Pollak,* 343 U.S. 451 (1952).

If the plaintiff is attempting to assert a *Bivens*-type claim for damages against defendants in their individual capacities, while acting under "color of law," this claim also must be dismissed.

In *Bivens v. Six Unknown Named Agents,* 403 U.S. 388 (1971), the Court held that in certain circumstances, the violation of a provision of the United States Constitution can give rise to an action for damages against individual offending law enforcement officers even in the absence of a statute authorizing such relief. However, the Supreme Court has limited the effect of *Bivens* in the context of suits against the members of the military. In *Stanley,* the Court "concluded that 'taken together, the unique disciplinary structure of the Military Establishment and Congress' activity in the field constitutes special factors which dictate that it would be inappropriate to provide enlisted military personnel a *Bivens*-type remedy against their superior officers.' " 483 U.S. at 679 (quoting *Chappell,* 462 U.S. at 304).

Furthermore, "[i]t is noteworthy that the courts have not distinguished among various constitutional rights in applying *Chappell.*" *Introini v. South Carolina National*

Guard, 828 F.Supp. 391, 393 (citing *Mickens v. United States Army*, 760 F.2d 539 (4th Cir. 1985) (*Bivens* does not apply to a claim for deprivation of procedural due process); *Jordan v. National Guard Bureau*, 799 F.2d 99, 108 (3d Cir. 1986) (member of National Guard cannot maintain a § 1983 action for damages against military superiors); *Crawford v. Texas Army National Guard*, 794 F.2d 1034 (5th Cir. 1986). Therefore, similar to the alleged Title VII claim, under *Chappell*, plaintiff, a uniformed member of the military, may not bring a constitutional tort claim against his superior officers.

Voluntary Resignation

Resignations and retirements from the military are presumed to be voluntary. *Nickerson v. United States*, 35 Fed.Cl. 581, 586 (1996) (citing *Colon v. United States*, 32 Fed.Cl. 481, 488 (1994). "This presumption applies even if a service member, in making a resignation decision is confronted with 'a choice of unpleasant alternatives.' " *Id.* (quoting *Sammt v. United States*, 780 F.2d 31, 33 (Fed.Cir. 1985). Courts have held that this presumption can be rebutted in certain circumstances. *See Scharf v. Department of Air Force*, 710 F.2d 1572, 1574 (Fed. Cir. 1983). Specifically, the presumption may be overcome if a plaintiff can show that: (1) the government caused the plaintiff to resign under the threat of duress or by other coercion; (2) the government misrepresented information relied upon to the plaintiff's detriment; (3) the plaintiff attempted to withdraw the resignation before its effective date; (4) the plaintiff resigned under time pressure; or (5) the plaintiff was not mentally competent to appreciate the consequences of the resignation. *Nickerson*, 35 Fed.Cl. 581, 586

(citing *Mc Intyre v. United States*, 30 Fed.Cl. 207, 211 (1993); *Bergman v. United States*, 28 Fed.Cl. 580, 585 (1993); *Christie v. United States*, 518 F.2d 584, 587-88 (1975).

In this case the plaintiff claims that his resignation from OCS was the result of duress or coercion. In order to establish that plaintiff was coerced into resigning plaintiff must show that; (1) he involuntarily accepted defendant's terms; (2) circumstances permitted no other alternative; and (3) said circumstances were the result of coercive acts by defendant. *Christie*, 518 F.2d at 587. The above test is not disjunctive and therefore a plaintiff must establish all three elements for the exception to apply. *Nickerson*, 35 Fed.Cl. at 587 (citing *Bergman*, 28 Fed.Cl. at 586 citing *Information Systems and Networks Corp v. United States*, 994 F.2d 792 (Fed.Cir. 1993) (all requirements of conjunctive must be established)). "In considering the applicability of this exception to a particular case, the court must engage in an objective inquiry into the facts." *Id.* at 857. "Thus, a [service member's] subjective evaluation of the scenario is not the yardstick upon which the court will base its determination." *Id.* (quoting *Bergman*, 28 Fed.Cl. at 586).

An examination of all of the facts reveals that plaintiff has failed to overcome the presumption that his resignation from OCS was voluntary. Plaintiff appears to contend that there was no alternative but to agree to resign from OCS. However, the record reveals that plaintiff did indeed have a viable alternative to resignation. Simply put, he could have accepted the recommendation of his superiors and agreed to recycle into the next OCS class. "Merely because plaintiff was faced with an inherently unpleasant situation in that [his] situation was arguably limited to two unpleasant alternatives does not

obviate the voluntariness of [his action]." *Christie*, 518 F.2d at 587. *See also Schultz v. United States*, 810 F.2d 1133, 1136 (Fed.Cir. 1987) (holding that limited choices do not make the resulting resignation an involuntary act).

In addition, courts have held that if the grounds for requiring plaintiff to make an unpleasant choice are unreasonable then they are inherently coercive. *See Hargray v. Hallandale*, 57 F.3d 1560, 1568 (8th Cir. 1995); *Stone*, 855 F.2d at 174; *Schultz*, 810 F.2d at 1136-37; *Christie*, 518 F.2d at 587-88. However, in this case plaintiff does not contest the basis for the recycle recommendation and cannot therefore contend that his superiors lacked reasonable grounds for recommending his recycle. It is, however, worth noting that the grounds which were the basis for the decision to recommend plaintiff for recycle, including his demonstrated lack of leadership ability, are well supported by the record and would be deemed reasonable.

Finally, as a Specialist in the Army Reserve, holding a Masters Degree in Education, with six years experience in the New York City public school system, there is every reason to believe plaintiff resigned from OCS "freely and without coercion," as is required by paragraph 4 of the "Request For Disposition Prior to Graduation" form, which plaintiff signed prior to discharge. "This fact alone supports the voluntariness of his discharge." *Nickerson*, 35 Fed.Cl. 587 (citing *Colon*, 32 Fed.Cl. at 489).

Conclusions

For the above stated reasons the complaint is dismissed with prejudice.

/s/ Dickinson R. Debevoise
Dickinson R. Debevoise
U.S.S.D.J.

April 28, 1997

APPENDIX 3

UNITED STATES COURT OF APPEAL FOR THE THIRD CIRCUIT

January 12, 1998

No. 97-5377

SHELDON LAMAR HUNT, SPECIALIST, USAR
v.
SCOTT L. ARMBRISTER, LT. COLONEL, et al.
Specialist Sheldon Lamar Hunt, Appellant

Present: GREENBERG, SCIRICA and ALDISERT, *Circuit Judges.*

1. Motion by appellees to file supplemental brief and to strike certain portions of appellant's brief.

2. Response by appellant to above motion.

Sent for the Court's information is copy of clerk's order of 10/14/97 referring the above motion and response to the merits panel.

/s/ Rita Golden/MCW
Rita Golden
Case Manager 597-5019

Listed for disposition on the merits for 3/10/98.

ORDER

The foregoing motion is denied.

By the Court,

/s/ Judge Scirica
Circuit Judge

Dated: MAY 29 1998

LD/CC=EGK
SCC

APPENDIX 4

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5377

SHELDON LAMAR HUNT,
SPECIALIST, USAR

V.

SCOTT L. ARMBRISTER, LT. COLONEL;
DAVID CANNON, CAPTAIN, USA;
CALVIN GLENN, SGT., USA
Specialist Sheldon Lamar Hunt,
Appellant

(D.C. Civ. No. 97-cv-00004)

SUR PETITION FOR PANEL REHEARING

Present: GREENBERG, SCIRICA and ALDISERT, *Circuit Judges.*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, and no judge who concurred in the decision having asked for rehearing, and none of the members of the panel having voted for rehearing, the petition for rehearing is denied.

BY THE COURT,

/s/ Judge Scirica
Circuit Judge

DATED: MAY 19 1998

LD/CC=EGK
SCC

APPENDIX 5

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SHELDON LAMAR HUNT, SPECIALIST, USAR,	:	
Appellant,	:	Docket No. 97-5377
vs.	:	
SCOTT L. ARMBRISTER, LT COLONEL, DAVID CANNON, CAPTAIN, USA, CALVIN GLENN, SGT, USA,	:	
Appellees.	:	

APPELLANT'S RESPONSE TO APPELLEES' MOTION TO FILE SUPPLEMENTAL APPENDIX AND STRIKE REFERENCED STATEMENTS FROM APPELLANT'S BRIEF

To the Honorable, the Judges of the said United States Court of Appeals for the Third Circuit Court:

The appellant, by his attorney, Earl G. Kauffman, Esquire, respectfully represents the following:

1. Appellees move for leave to file a Supplemental Appendix in the above captioned case. *Appellant does not object.*

2. Appellees move that appellant has set forth matters of fact that do not appear of record. *Appellant concurs.*

3. Appellees move that matters of fact not of record be stricken from the appellant's brief. *Appellant objects.* The appellant's original complaint outlines how the military failed to give the appellant the required written notification and opportunity to rebut the decision of his recycle. The appellant then proceeded *pro se* at the district court level without legal background. The court of appeals recognizes that a complaint filed *pro se* is to be held "to less stringent standards than formal pleadings drafted by lawyers" *Guerro v. Hauck,* 502 F.2d 579, 580 (5th Cir. 1974).

   Dismissal with prejudice for failure to state claim should not be entered unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief, particularly when plaintiff is appearing *pro se. Id.* at 580.

   The appellant, with his lack of legal experience, failed to present to the court, the totality of circumstances in his case. As the appellant's case was dismissed, under Rules 12(b)(1) and 12(b)(6), with prejudice, the facts of the appellant's case have never been properly presented. The appellant respectfully requests that his honorable court review the allegations in its totality to make a fair and impartial determination in the appellant's case. The review of the allegations presented by appellant, present no harm or prejudice to the appellees since they will have ample opportunity

> to present their position and respond to the appellant's allegations. Should the allegations, however, not be reviewed, the court will not have a full understanding of the case which will result in substantial harm and undue prejudice to the appellant.

WHEREFORE, appellant respectfully requests this Honorable Court deny the Appellees' Motion to Strike referenced statements from the appellant's brief and grant Appellees' Motion to File a Supplemental Appendix.

Respectfully Submitted,

/s/ Earl G. Kauffman
Earl G. Kauffman, Esquire
Attorney for Appellant

Date: September 22, 1997

CERTIFICATE OF SERVICE

I, Earl G. Kauffman, Esquire, do certify that an original and three true and correct copies of the foregoing Response have been hand delivered on September 22, 1997, to the Office of the Clerk, United States Court of Appeals, For the Third Circuit, 21400 Unites [sic] States Courthouse, 601 Market Street, Philadelphia, PA 19106-1790, and copies delivered by first class mail to the following:

Susan C. Cassell, AUSA
Deputy Chief, Civil Division
970 Broad Street, Rm 700
Newark, NJ 07102

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, NJ 07063-1409

I certify, under penalty of perjury that the foregoing is true and correct. Executed on 22nd day of September, 1997.

/s/ Earl G. Kauffman
Earl G. Kauffman, Esquire
LL.M. in Trial Advocacy
The Bourse, Ste 585
111 S. Independence Mall East
Philadelphia, PA 19106
(215) 625-2708
FAX (215) 625-3998
E-Mail:
theatty@bellatlantic.net

APPENDIX 6

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SHELDON LAMAR HUNT, SPECIALIST, USAR,	:	Docket No. 97-5377
Appellant,	:	
vs.	:	
SCOTT L. ARMBRISTER, LT COLONEL, DAVID CANNON, CAPTAIN, USA CALVIN GLENN, SGT, USA,	:	
Appellees.	:	

PETITION FOR REHEARING
BEFORE THE ORIGINAL PANEL
GREENBERG, SCIRICA and ALDISERT, Circuit Judges

On Appeal from the United States District Court
For the District of New Jersey
D.C. Civil Action No. 97-cv-00004
(Honorable Dickinson R. Debevoise)

The Bourse – Suite 585
111 S. Independence
Mall East
Philadelphia, PA 19106
(215) 625-2708
FAX: (215) 625-3998
E-MAIL: theatty@bellatlantic.net

EARL G. KAUFFMAN,
ESQUIRE
LL.M. in Trial Advocacy
Attorney for Appellant
Attorney I.D. 40726
Bar Code 7772

The Petition for Rehearing before the original panel is timely filed within the 45 days allowed when the

United States is a party. Judgment was filed on March 23, 1998.

THE COURT DID NOT DECIDE THE ISSUES REGARDING THE APPELLEES'/MILITARY VIOLATION OF RECYCLE RULES AND REGULATIONS.

The appellant, acting pro se, filed his complaint with the United States District Court District of New Jersey. In his complaint, he raised issues of employment discrimination and violation of due process. These are not the issues that appellant's counsel raised in the Brief for Appellant. The issues that counsel argued in Issues 1 and 2 involved the appellees'/military violation of recycle rules and regulations. The Court failed to address these issues. The military's violation of rules and regulation give the Court subject matter jurisdiction.

The Court, instead of addressing counsel's issues, focused on and responded to issues that had no merit, which appellant raised without counsel at the District Court level. The Court just has to look at the caption of the case to realize that the appellant did not have the requisite knowledge in filing his civil action. Individual military members can not be sued.

The appellant, still a member of the Army Reserve, is entitled to have all his issues of merit addressed by the Court. The appellant does not request an in banc rehearing under Rule 35(b).

WHEREFORE, the appellant respectfully requests that the Petition for Rehearing be granted.

Respectfully Submitted,

/s/ Earl G. Kauffman
Earl G. Kauffman, Esquire
Attorney for Appellant

Hunt v. Armbrister
District of NJ, Civil Action No. 97-4
Docket No. 97-5377

CERTIFICATE OF SERVICE

I, Earl G. Kauffman, Esquire, Attorney for Appellant, do hereby certify that an original and three copies of the within Petition for Rehearing have been furnished to the Office of the Clerk, United States Court of Appeals, For the Third Circuit, 21400 United States Courthouse, 601 Market Street, Philadelphia, PA 19106-1790, by hand delivery, this 6th day of May, 1998 and sent by first class mail to the following:

1. Susan C. Cassell, Esquire, AUSA
   Deputy Chief, Civil Division
   Office of the United States Attorney
   970 Broad Street, Rm 700
   Newark, NJ 07102
   Tel. No. (201) 645-2844

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 6th day of May, 1998.

/s/ Earl G. Kauffman
Earl G. Kauffman, Esquire
Attorney for Appellant

APPENDIX 7

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SHELDON LAMAR HUNT, SPECIALIST, USAR,	:	
Appellant,	:	Docket No. 97-5377
vs.	:	
SCOTT L. ARMBRISTER, LT COLONEL, DAVID CANNON, CAPTAIN, USA, CALVIN GLENN, SGT, USA,	:	
Appellees.	:	

REPLY FOR APPELLANT

United States District Court
For the District of New Jersey
Civ. No. 97-4 (DRD)

The Bourse-Suite 585
111 S. Independence Mall East
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EARL G. KAUFFMAN, ESQUIRE
LL.M. in Trial Advocacy
Attorney for Appellant
Attorney I.D. 40726
Bar Code 7772

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Earl G. Kauffman, Esquire
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SHELDON LAMAR HUNT, SPECIALIST, USAR,	:	
Appellant,	:	Docket No. 97-5377
vs.	:	
SCOTT L. ARMBRISTER, LT COLONEL, DAVID CANNON, CAPTAIN, USA, CALVIN GLENN, SGT, USA,	:	
Appellees.	:	

Appellant's Reply to Appellee's Brief

ISSUES REGARDING JURISDICTION AND IMMUNITIES

Our society has checks and balances. The Federal Judiciary is a check on the Military when the Military fails to follow its rules and regulations. Case law as well as federal statute provided in the Appellant's Brief clearly allows the Federal Court subject matter jurisdiction in the case at bar.

The Appellant proceeded *pro se* at the District Court Level. Appellant technically did not name the proper Defendants in his Complaint. The Appellant should have named, as the proper Defendants, the Secretary of Defense and the Secretary of the Army as representatives of the Government. The spirit of the *Complaint is Just,* and the fact that the Military did not follow its rules and regulations does not change.

In Appellee's Brief, (footnote 8 page 11) Appellee addresses service of process. Pursuant to Federal Rules of Civil Procedure Rule 4(d)(4) service need only be made to the U.S. Attorney for the District in which the action is brought and the Attorney General of the United States. Service of process does not have to be made to the named individuals in the Complaint.

PROPERTY RIGHT IN MILITARY SERVICE AND DUE PROCESS NOTICE

Although the Appellant may not have a protected property or liberty interest in service in the military, the military still must follow its rules and regulations and give due process as dictated in those rules and regulations. The Constitution and its Fifth and Fourteenth Amendments and Due Process are without question applicable to members of the Armed Forces. The military teaches attention to detail and in the case at bar it apparently holds the Appellant to a higher standard, since the Appellee recognizes that it failed to give written notice to the Appellant that he had the right to file a written Appeal. Appellant was denied due process as required in Army Regulation (AR) 140-50 (Update) §4-3, Issue No.

23/1 September 1994 and United States Army Infantry School (U.S.A.I.S.) Regulation 351-14 § 3, dated 30 November 1988. Being in the Military does not mean that the service member is without due process rights. If anyone should have his rights protected it is that person that protects the rights of others through military service.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Appellees cite (on page 18 of Appellee's Brief) *Kawitt v. United States*, 842 F.2d 951 (7th Cir. 1988) where plaintiff lied to the navy about his age when enlisting in the reserves. In *Kawitt*, the Appellate Court held that it would not require such a laborious process (Board for Corrections of Military Records) when the likelihood of success was virtually nonexistent. The Appellant distinguishes *Kawitt* from the case at bar. The Appellant's facts are not a fine line distinction, regarding a birth date, they relate to numerous circumstances at officer candidate school, which are in factual dispute. The Appellant's application which is still in process at the Army Board for Corrections of Military Records is not frivolous or futile.

VOLUNTARINESS OF APPELLANT'S RESIGNATION

Appellant's resignation was not voluntary since the information or omission of material matters given to him by his command were erroneous. Appellant was told by his command, among other things, that he was recycled, not that he was being recommended for recycle and that he would be given an opportunity to file a written

Appeal. His resignation was totally under false assumptions that were not the result of his making. The Appellant was led to believe through the Command's deceit, whether it was intentional or negligent, that he had no option other then to recycle. The Command's lack of attention to detail regarding Appellant's right to file a written Appeal to a recycle recommendation as prescribed in the Army Regulations is what has caused this civil action.

> Under Pennsylvania law, fraud claim requires plaintiff to prove either a knowing misrepresentation or a nonprivileged failure to disclose some existing fact; if misrepresentation was innocently made, it is actionable only if it relates to matter material to the transaction involved. *Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594, rehearing denied, certiorari denied 112 S.Ct. 2300, 504 U.S. 955, 119 L.Ed.2d 224, certiorari denied 112 S.Ct. 2300, 504 U.S. 955, 119 L.Ed.2d 224, certiorari denied *Pollock v. Hughes*, 112 S.Ct. 2300, 504 U.S. 955, 119 L.Ed.2d 224, appeal after remand *Loughman v. Consol-Pennsylvania Coal Co.*, 6 F.3d 88 (3rd Cir. 1991)
>
> Deliberate nondisclosure of material fact is equivalent of affirmation of falsity to support claim of fraudulent misrepresentation, and innocent misrepresentation is actionable if it pertains to matter material to transaction involved. *Fort Washington Resources, Inc. v. Tannen*, 858 F.Supp.455, (E.D. Pa. 1994) reconsideration denied.
>
> Fraud is proved when it is shown that false representation was made knowingly or in conscious ignorance of truth, or recklessly without caring about truth or falsity. *Id.*

> Negligent misrepresentation and fraudulent misrepresentation under Pennsylvania law both require misrepresentation, justifiable reliance by recipient, and damages proximately cause by that reliance. *Id.*
>
> Negligent misrepresentation differs from fraudulent misrepresentation, under Pennsylvania law, in standard of proof and mental state required; only preponderance of evidence is require [sic] and alleged misrepresented [sic] must be shown only to have failed to exercise reasonable care of competence in obtaining or communication information. *Restatement (Second) of Torts* § 552. *Id.*

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that the decision of the District Court be reversed.

APPELLANT REQUESTS ORAL ARGUMENT

Respectfully submitted,

/s/ Earl Kauffman
Earl Kauffman,
Esquire
Attorney for Appellant

Hunt v. Armbrister
District of NJ, Civil Action No. 97-4
Docket No. 97-5377

CERTIFICATE OF SERVICE

I, Earl G. Kauffman, Esquire, Attorney for Appellant, do hereby certify that an original and nine copies of the within Appellant's Reply to Appellee's Brief have been furnished to the Office of the Clerk, United States Court of Appeals, For the Third Circuit, 21400 United States Courthouse, 601 Market Street, Philadelphia, PA 19106-1790, by hand delivery, this 14th day of October, 1997 and sent by first class mail to the following:

Susan C. Cassell, Esquire, AUSA
Deputy Chief, Civil Division
Office of the United States Attorney
970 Broad Street, Rm 700
Newark, NJ 07102
Tel. No. (201) 645-2844

I certify under penalty of perjury that the foregoing is true and correct. Executed on 14th day of October, 1997.

/s/ Earl G. Kauffman
Earl G. Kauffman,
Esquire
Attorney for Appellant

APPENDIX 8

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY
INFANTRY CENTER
FORT BENNING, GEORGIA 31905-5000

[LOGO] [LOGO]

February 5, 1996

Assistance and Investigation
Branch

Mr. Sheldon L. Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Mr. Hunt:

This is a final response to your October 30, 1995 letter to this office concerning your allegations against Office Candidate School (OCS).

A thorough inquiry was conducted into the allegations you presented. We have determined that the actions taken by the OCS chain of command concerning your recycle were, with one exception, appropriate. Each allegation and our determination is discussed below.

– The allegation that the OCS Training-Assessment-Counseling (TAC) cadre singled you out for disparaging treatment is NOT SUBSTANTIATED. Based on the evidence presented by other officer candidates and the OCS cadre chain of command, your treatment by the OCS TACs was equitable and fair. The evidence showed that all OCS candidates were treated in an appropriate and even handed manner by the TAC officers and noncommissioned officers (NCOs).

– The allegation that the OCS TACs used other officer candidates to provide input for evaluation purposes is NOT SUBSTANTIATED. Based on the evidence presented from other officer candidates, no TAC officer or NCO solicited input from an officer candidate for evaluation purposes.

–The allegation that the grading of leadership positions was too subjective is NOT SUBSTANTIATED. Based on the evidence presented by other officer candidates and the OCS cadre, the standards used by the TAC officers and NCOs were consistent and applied to each situation equitably. The evidence clearly indicates that you were evaluated in a manner consistent with that of other officer candidates.

– The allegation that the OCS chain of command informed an investigator that you were recycled because your academic average was too low is NOT SUBSTANTIATED. The officer who was allegedly informed of this is not an investigator or associated with an investigative agency. The evidence reveals that the OCS chain of command informed LTC John H. Schultz, Chief, Individual Training, United States Army Reserve Command, that you were in danger of being disenrolled because of deficiencies in leadership. Although your academic and physical training scores were discussed, LTC Schultz testified that the OCS chain of command made it clear to him that you were being recycled because of leadership deficiencies and no other reason.

– The allegation that all of your evaluations were negative in nature and that nothing positive was ever said about your performance is NOT SUBSTANTIATED.

The evidence reveals that several of your leadership evaluations contain positive comments or evaluations concerning your performance. A comparison of other officer candidate's leadership evaluations showed that your evaluations were consistent with those of your peers.

– The allegation that SSG Glenn placed you under duress to check the "Lack of Commitment" block in order for you to be released form the OCS program is NOT SUBSTANTIATED. Testimony from all other witnesses does not corroborate your allegation.

– The allegation that LTC Armbrister, CPT Cannon, and CPT Ogle were biased against you, and because of that bias, made an unfair determination concerning your situation is NOT SUBSTANTIATED. There is no evidence to indicate that LTC Armbrister, CPT Cannon, or CPT Ogle had developed any bias about you or your situation. In fact, based on your performance evaluations and the testimony of other officer candidates, the actions of CPT Ogle and CPT Cannon were appropriate and consistently applied to all candidates. Although both CPT's Cannon and Ogle recommended you for recycle, LTC Armbrister made the decision to provide you an additional opportunity for your leadership ability to be evaluated during CAPSTONE. Based on your displayed leadership during that evaluation, LTC Armbrister properly exercised his authority to recycle you into the next available class.

Based on the inquiry it was determined that you were not afforded appropriate due process during the recycle process. United States Army Infantry School Regulation 351-14, Section III states that before a recommendation for recycle is forwarded to the course convening

authority, the student will be notified in writing of the contemplated action and the reasons for referral. The notification will advise the student that he may submit a rebuttal of matters for consideration within 48 hours after receipt of notification. The student will immediately reply by endorsement, acknowledging receipt and will indicate his intentions concerning rebuttal. The chain of command will submit recommendations, the student's notification and response, and any other evidence to the course convening authority for final decision.

The evidence indicates that you were notified of the recycle action verbally and not in writing. Additionally, you were not permitted to rebut the recycle action in writing as directed by the regulation.

The Commander, 3d Battalion (OCS), 11th Infantry Regiment, and the Chief of Staff, United States Army Infantry School have been notified of this finding. Any decision concerning the disposition of your case will be made by the United States Army Infantry School.

The inquiry has been completed and no further action pertaining to the allegations will be taken by this office.

Sincerely,

/s/ John M. Dykes
John M. Dykes
Lieutenant Colonel,
U.S. Army
Inspector General

APPENDIX 9

DEPARTMENT OF THE ARMY
HEADQUARTERS 3RD BATTALION(OCS),
11TH INFANTRY
FORT BENNING, GEORGIA 31905

[LOGO]

21 March 1996

Specialist Sheldon L. Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Specialist Hunt:

I received a copy of your comments to the Congressional Inquiry dated 29 January 1996. I reviewed the letter you referenced, written by Mr. James Brinson, Adjutant General, United States Army Infantry Center (USAIC), to Senator Bill Bradley dated 9 January 1996 and found it to be factual.

My decision to recycle you to the next Officer Candidate School class was based on your weak leadership performance. Specifically, you demonstrated an inability to follow instructions and accept accountability for your actions. At no time were you discouraged from writing a rebuttal to your leadership evaluations or counseling statements. Both the Leadership Self-Assessment Form and the General Counseling Form allow for individual input.

I was surprised to read in your letter that, "in order to file charges while I was in OCS I had to disenrole [sic], because the Inspector General's Office would not handle my case, until then." The Inspector General will receive

and take action on any complaint filed, regardless of the status of the individual.

Although you decided to voluntarily drop from the course rather than recycle, your complaint initiated a review of our recycle policy. Effective 1 December 1995, the Recycle Appeal Policy was revised to bring the Officer Candidate School in line with the United States Army Infantry School and allows an appeal, in writing, to the Commander, 11th Infantry Regiment within 48 hours of intent to recycle.

As previously stated, you may attend the Officer Candidate School at any time and upon successful completion become a commissioned officer.

I am forwarding a copy of this letter to the Adjutant General, USAIC.

Sincerely,

/s/ Scott L. Armbrister
Scott L. Armbrister
Lieutenant Colonel, U. S. Army
Commanding Officer

APPENDIX 10

DEPARTMENT OF THE ARMY
UNITED STATES ARMY INFANTRY SCHOOL
FORT BENNING, GEORGIA 31905

[LOGO]

April 4, 1997

Office of the Chief of Staff

Mr. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Mr. Hunt:

Your letter was received as indicated in a phone conversation between yourself and my Executive Officer, Major Russell, in March. You were also informed in the conversation that the case had been reviewed and the procedures corrected but the results were the same. Additionally, you were provided the numbers to our Staff Judge Advocate Office for further assistance.

I trust this meets your request for acknowledgment of your letter.

Sincerely,

/s/ Michael A. Bingham
Michael A. Bingham
Colonel, U.S. Army
Chief of Staff, USAIS

APPENDIX 11

4-3. Relief and retention of candidates

a. Candidates attending OCS or OCRC who fail to demonstrate fitness for commissioned status will be relieved. School commandants (State adjutants general for ARNG OCS) or their designated representatives have relief authority. Each candidate's potential performance as a commissioned officer will be fully evaluated before relief (AR 351-5, para 5-13).

b. School commandants or their designated representatives will relieve candidates for –

(1) Disciplinary reasons.

(2) Deficiencies in leadership.

(3) Security reasons.

(4) Lack of motivation.

(5) Falsification or omission of facts on applications.

(6) Lack of adaptability.

(7) Honor code violations.

(8) Misconduct.

(9) Academic deficiencies.

(10) Disqualifying physical defects.

(11) Physical deficiency.

(12) Compassionate or hardship reasons.

(13) Personal reasons. The school commandant or a designated representative will evaluate a candidate's

request for relief for personal reasons. Members resigning without sufficient justification will be relieved for "lack of motivation." Sufficient justification will be determined by the school commandant or his or her designated representative.

c. School commandants will establish procedures for officer candidates to appeal a relief determination. This applies to candidates who have been relieved for one or more of the reasons listed in b(1) through (11) above. However, the provisions of AR 15–6 will not apply.

d. Some candidates may fail to complete a course through no fault of their own. Others may fail, but records show they may reasonably overcome their deficiencies by enrolling in a later class. These candidates may be retained by the commandant for the next class if the candidate agrees to this. A candidate who elects not to be retained for a later class forfeits eligibility to reapply for attendance at any OCS.

e. When a candidate is retained for a later OCS or OCRC class at Fort Benning, school commandant will –

(1) Obtain a written request from the candidate to be continued on ADT for a sufficient period to complete the required training.

(2) Notify the appropriate area commander, or CG, ARPERCEN (for the IRR), of the change in schedule. Request amendatory or supplemental orders (AR 310-10) to cover the additional period.

APPENDIX 12

* * *

b. Course Convening Authorities will ensure the recycle action will permit students to attend all blocks of instruction covering deficient subjects or events. In addition, extra training may be proscribed after duty hours for students who require additional instruction in order to raise their level of proficiency and allow them to graduate.

c. Once recycled, students will not be "recycled" or reassigned forward; however, they may be declared graduates and released early under the provisions of Section V, of this regulation, providing all course requirements have been met.

2. PROCEDURES.

a. Before a recommendation for a recycle action is forwarded to the Course Convening Authority, the student will be notified in writing of the contemplated action and reason(s) for referral. The notification will advise the student that he may submit a rebuttal or matters for consideration within 48 hours after receipt of notification. The student will immediately reply by endorsement or return comment, acknowledging receipt, and will indicate his intentions concerning rebuttal using the format shown at Appendix F, Figure F-7.

b. The student's chain of command will submit recommendations, along with the student's notification and response, and any other relevant evidence to the Course Convening Authority for final decision.

c. Recycle will be directed by the Course Convening Authority, using the format shown at Appendix F, Figure F-7.

APPENDIX 13

United States District Court
District of New Jersey
Newark, New Jersey 07101-0419

Title of action: **Civil Action**

Civil Action No. _____

Specialist Sheldon Lamar Hunt, USAR	)
	)
-vs-	)
	)
Lt. Colonel Scott L. Armbrister, USA Captain David Cannon, USA Sgt. Calvin Glenn, USA	)

PARTIES

(1). *Specialist Sheldon Lamar Hunt – 405 Clinton Avenue, Plainfield, New Jersey 07063-1409*

(2). *Lt. Col. Scott L. Armbrister – Headquarters, 3rd Battalion (OCS) 11th Infantry Fort Benning, GA. 31905*

(3). *Captain David Cannon – Headquarters, 3rd Battalion (OCS) 11th Infantry Fort Benning, GA 31905*

(4). *Sgt. Calvin Glenn – A Company, 3rd Battalion (OCS) 11th Infantry Fort Benning, GA. 31905*

JURISDICTION

Failure to provide equal opportunity of higher employment/promotion

CAUSE OF ACTION

I. *I was not given the right to redress the recycling action taken by the Battalion Commander Lt Col. Scott L. Armbrister and the Company Commander Captain David Cannon, as prescribe by Regulation 351-14, Section III.*

II. *Ordered to Check (Lack of Commitment), by Sgt. Calvin Glenn. Request for Disposition Prior to Graduation – ATSH-TPC-B (351).*

DEMAND

Six Hundred & Fifty Thousand Dollars $650,000.

[LOGO] [LOGO]

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES
ARMY INFANTRY CENTER
FORT BENNING GEORGIA 31905-5000

February 5, 1996

REPLY TO
ATTENTION Of

Assistance and Investigation
Branch

Mr. Sheldon L. Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Mr. Hunt:

This is a final response to your October 30, 1995 letter to this office concerning your allegations against Office Candidate School (OCS).

A thorough inquiry was conducted into the allegations you presented. We have determined that the actions taken by the OCS chain of command concerning your recycle were, with one exception, appropriate. Each allegation and our determination is discussed below.

– The allegation that the OCS Training-Assessment-Counseling (TAC) cadre singled you out for disparaging treatment is NOT SUBSTANTIATED. Based on the evidence presented by other officer candidates and the OCS cadre chain of command, your treatment by the OCS TACs was equitable and fair. The evidence showed that all OCS candidates were treated in an appropriate and even handed manner by the TAC officers and noncommissioned officers (NCOs).

– The allegation that the OCS TACs used other officer candidates to provide input for evaluation purposes is NOT SUBSTANTIATED. Based on the evidence presented from other officer candidates, no TAC officer or NCO solicited input from an officer candidate for evaluation purposes.

– The allegation that the grading of leadership positions was too subjective is NOT SUBSTANTIATED. Based on the evidence presented by other officer candidates and the OCS cadre, the standards used by the TAC officers and NCOs were consistent and applied to each situation equitably. The evidence clearly indicates that you were evaluated in a manner consistent with that of other officer candidates.

– The allegation that the OCS chain of command informed an investigator that you were recycled because

your academic average was too low is NOT SUBSTANTIATED. The officer who was allegedly informed of this is not an investigator or associated with an investigative agency. The evidence reveals that the OCS chain of command informed LTC John H. Schultz, Chief, Individual Training, United States Army Reserve Command, that you were in danger of being disenrolled because of deficiencies in leadership. Although your academic and physical training scores were discussed, LTC Schultz testified that the OCS chain of command made it clear to him that you were being recycled because of leadership deficiencies and no other reason.

– The allegation that all of your evaluations were negative in nature and that nothing positive was ever said about your performance is NOT SUBSTANTIATED. The evidence reveals that several of your leadership evaluations contain positive comments or evaluations concerning your performance. A comparison of other officer candidate's leadership evaluations showed that your evaluations were consistent with those of your peers.

– The allegation that SSG Glenn placed you under duress to check the "Lack of Commitment" block in order for you to be released from the OCS program is NOT SUBSTANTIATED. Testimony from all other witnesses does not corroborate your allegation.

– The allegation that LTC Armbrister, CPT Cannon, and CPT Ogle were biased against you, and because of that bias, made an unfair determination concerning your situation is NOT SUBSTANTIATED. There is no evidence to indicate that LTC Armbrister, CPT Cannon, or CPT Ogle had developed any bias about you or your situation.

In fact, based on your performance evaluations and the testimony of other officer candidates, the actions of CPT Ogle and CPT Cannon were appropriate and consistently applied to all candidates. Although both CPT's Cannon and Ogle recommended you for recycle, LTC Armbrister made the decision to provide you an additional opportunity for your leadership ability to be evaluated during CAPSTONE. Based on your displayed leadership during that evaluation, LTC Armbrister properly exercised his authority to recycle you into the next available class.

Based on the inquiry it was determined that you were not afforded appropriate due process during the recycle process. United States Army Infantry School Regulation 351-14, Section III states that before a recommendation for recycle is forwarded to the course convening authority, the student will be notified in writing of the contemplated action and the reasons for referral. The notification will advise the student that he may submit a rebuttal of matters for consideration within 48 hours after receipt of notification. The student will immediately reply by endorsement, acknowledging receipt and will indicate his intentions concerning rebuttal. The chain of command will submit recommendations, the student's notification and response, and any other evidence to the course convening authority for final decision.

The evidence indicates that you were notified of the recycle action verbally and not in writing. Additionally, you were not permitted to rebut the recycle action in writing as directed by the regulation.

The Commander, 3d Battalion (OCS), 11th Infantry Regiment, and the Chief of Staff, United States Army

Infantry School have been notified of this finding. Any decision concerning the disposition of your case will be made by the United States Army Infantry School.

The inquiry has been completed and no further action pertaining to the allegations will be taken by this office.

Sincerely,

/s/ John M. Dykes
John M. Dykes
Lieutenant Colonel, U.S. Army
Inspector General

March 31, 1997

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Colonel Lawrence K. White
Chief of Staff/United States Army Infantry Center
Fort Benning, Georgia 31905-5066

Dear Sir:

On January 2, 1997 I had written your office concerning Officer Candidate School. At this time your office had not responded to my request. Enclosed is a copy of the original letter. Please take this opportunity to evaluate this letter and I await your immediate reply.

cc: Federal Court of Newark, New Jersey

Sincerely

Sheldon Lamar Hunt
Spc, USAR

January 2, 1997

Special Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Colonel Lawrence K. White
Chief of Staff/United States Army Infantry Center
Fort Benning, Georgia 31905-5066

Dear Colonel White:

I am writing you in reference to an ongoing matter concerning an incident that happened while I was attending Officer Candidate School at Fort Benning, Georgia. There are several letters, perhaps on file in Fort Benning, which document said incident and the inspector General's findings. Sir, I respectfully request a reevaluation of the OCS Commander's decision as stated in his letter dated 21 March 1996.

While attending OCS in September 1995, I encountered what I believed to be deliberate attacks on my leadership abilities and felt that I had been targeted for failure. I was given a number of leadership counselings and ordered to sign them without any opportunities to rebut. Due to the attitude of my raters, the strict and unavailing behaviors of the TACs, I felt compelled to sign the counselings without any rebuttal or response.

With approximately less than a week remaining to complete OCS, I was informed that I had been recycled and, thereafter, placed in an isolated barracks away from my fellow candidates. The reason for my being recycled was allegedly poor academics (83%) and AFPT (280) scores. I personally felt that I had been the subject of

harassment throughout the course. I was notified verbally, that I had been recycled and I was not given a chance to appeal the decision as required by USAIS Regulation, (after, complaints filed against OCS and six months later, did the Battalion Commander document his reason to recycle me).

Since all actions required the consent of a rater, I did not feel comfortable asking my rater to use the telephone to call the Inspector General's Office. Feeling stressed and defeated, I felt my only alternative was to voluntarily request relief from the course. When doing so, Sgt. Calvin Glenn, placed me under duress, by ordering me to check (lack of commitment). Rather than, the term (other) followed by a written statement, as I originally wanted to do. An investigation by the Fort Benning Inspect General's office concluded that the USAIS Regulation 351-14, Section III, was not properly followed when I was informed that I had been recycled.

Colonel White, I am a U.S. Army Reservist who commutes from New Jersey to Baton Rouge, Louisiana to attend my monthly drills. I worked very hard to obtain approval from my Reserve Unit to attend Officer Candidate School. Had I requested relief on my own accord, or had not met the standard, I could understand and accept having to complete the school again. Because, the cadre did not follow the proper procedures upon informing me of their decision to recycle me, (was denied my due process rights and thus the chance to perhaps avoid recycled), because USAIS policy was not adhered to.

Therefore, Colonel White, respectfully request that you grant me a commission or the opportunity to rebut

the recycling action as directed by Regulation 351-14, Section III. I ask for your assistance and sincere consideration of this matter.

Sincerely,

Sheldon Lamar Hunt
SPC, USAR

[LOGO]

DEPARTMENT OF THE ARMY
HEADQUARTERS, 3RD BATTALION (OCS),
11TH INFANTRY
FORT BENNING, GEORGIA 31905

21 March 1996

Specialist Sheldon L. Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Specialist Hunt:

I received a copy of your comments to the Congressional Inquiry dated 29 January 1996. I reviewed the letter you referenced, written by Mr. James Brinson, Adjutant General, United States Army Infantry Center (USAIC), to Senator Bill Bradley dated 9 January 1996 and found it to be factual.

My decision to recycle you to the next Officer Candidate School class was based on your weak leadership performance. Specifically, you demonstrated an inability to follow instructions and accept accountability for your actions. At no time were you discouraged from writing a rebuttal to your leadership evaluations or counseling

statements. Both the Leadership Self-Assessment Form and the General Counseling Form allow for individual input.

I was surprised to read in your letter that, "in order to file charges while I was in OCS I had to disenrole [sic], because the Inspector General's Office would not handle my case, until then." The Inspector General will receive and take action on any complaint filed, regardless of the status of the individual.

Although you decided to voluntarily drop from the course rather than recycle, your complaint initiated a review of our recycle policy. Effective 1 December 1995, the Recycle Appeal Policy was revised to bring the Officer Candidate School in line with the United States Army Infantry School and allows an appeal, in writing, to the Commander, 11th Infantry Regiment within 48 hours of intent to recycle.

As previously stated, you may attend the Officer Candidate School at any time and upon successful completion become a commissioned officer.

I am forwarding a copy of this letter to the Adjutant General, USAIC.

Sincerely,

/s/ Scott L. Armbrister
Scott L. Armbrister
Lieutenant Colonel, U. S. Army
Commanding Officer

ATSH-TPC (ATSH-TPC-B/11 Sep 95) 351-5c 2nd End SSG Norman/rfw/545-4510
SUBJECT: Voluntary Release from Officer Candidate School (Hunt, Shelton L., 135-64-6678)

Commander, 3rd Battalion, 11th Infantry Regiment, Fort Benning, Georgia 31905 11 Sep 95

FOR SEE DISTRIBUTION

1. Approved.

2. I have interviewed OC Hunt and reviewed his training records (Encl) on 8 Sep 95. I concur with his commander's recommendation. Effective 8 Sep 95, OC Hunt is released from Officer Candidate School, Course 4-95, for lack of commitment.

3. Additional Instructions: Individual will return to his parent unit of assignment (321st MMC, Foss Ave, Baton Rouge, LA 70802) on final clearance of this installation.

4. For additional information, please contact the Bn PSNCO at 545-4510.

/s/ Scott L. Armbrister
SCOTT L. ARMBRISTER
LTC, IN
Commanding

2 Encls
1. nc
Added 1 encl
2. Resignation

DISTRIBUTION:
1-ATSH-OTE-R
2-ATZB-AGT
1-ATSH-TPC-B
1-SOLDIER

ATSH-TPC-B (ASTH-TPC-B/11 Sep 95) 1st End CPT Cannon/dmc/545-3435
SUBJECT: Request for Disposition Prior to Graduation IAW Section V, AR 351-5, and USAIS Regulation 351-14, – OC HUNT, Sheldon L., 135-64-6678

B Company, 3rd Battalion (OCS), 11th Infantry Regiment, Fort Benning, Georgia 31905 11 Sep 95

FOR Commander, 3rd Battalion (OCS), 11th Infantry Regiment, Fort Benning, Georgia 31905

1. I recommend the approval of the voluntary resignation of OC Sheldon L. Hunt.

2. OC Hunt does not desire to recycle into OCS Class 1-96 and pursue a commission through OCS. He wishes to return to Louisiana to enter the IRR and continue his work as a high school teacher.

3. If you have any inquiries please contact the undersigned or CPT Hal Ogle at 545-3435.

/s/ David M. Cannon
DAVID M. CANNON
CPT. IN
Commanding

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #8 E3 CT-15/CT
EVNT GRADE: 85 (93.5 of 110 PTS)
CRS AVG: 85 (93.5 of 110 PTS)
DEPT AVG: 85 (93.5 of 110 PTS)
CRS. STDNG: 103/125

- PERSONAL IN NATURE -

STUDENT GRADESLIP 25-JUL-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #11 E3 WJ-D9/WJ
EVNT GRADE: 100 (132 of 132 PTS)
CRS AVG: 94 (258.5 of 275 PTS)
DEPT AVG: 100 (165 of 165 PTS)
CRS. STDNG: 83/124

- PERSONAL IN NATURE -

STUDENT GRADESLIP 25-JUL-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #12 E3 WJ-N9/WJ
EVNT GRADE: 100 (33 of 33 PTS)
CRS AVG: 94 (258.5 of 275 PTS)
DEPT AVG: 100 (165 of 165 PTS)
CRS. STDNG: 83/124

- PERSONAL IN NATURE -

STUDENT GRADESLIP 27-JUL-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #13 E3 CI-90/CI
EVNT GRADE: 70 (31.5 of 45 PTS)
CRS AVG: 90.63 (290 of 320 PTS)
DEPT AVG: 80.65 (125 of 155 PTS)
CRS. STDNG: 89/124

- PERSONAL IN NATURE -

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #10 E3 CU-90/CU
EVNT GRADE: 80 (52 of 65 PTS)
CRS AVG: 86.86 (373.5 of 430 PTS)
DEPT AVG: 78.68 (208.5 of 265 PTS)
CRS. STDNG: 90/124

– PERSONAL IN NATURE –

STUDENT GRADESLIP 28-JUL-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #14 E3 CO-90/CO
EVNT GRADE: 70 (31.5 of 45 PTS)
CRS AVG: 88.08 (321.5 of 365 PTS)
DEPT AVG: 78.25 (156.5 of 200 PTS)
CRS. STDNG: 90/124

– PERSONAL IN NATURE –

STUDENT GRADESLIP 01-AUG-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #3 E3 CE-90/CE
EVNT GRADE: 88 (17.6 of 20 PTS)
CRS AVG: 85.38 (469.6 of 550 PTS)
DEPT AVG: 79.12 (304.6 of 385 PTS)
CRS. STDNG: 102/124

– PERSONAL IN NATURE –

STUDENT GRADESLIP 07-AUG-95

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #5 E3 CP-90/CP
EVNT GRADE: 67.5 (47.25 of 70 PTS)
CRS AVG: 83.36 (516.85 of 620 PTS)
DEPT AVG: 77.33 (351.85 of 455 PTS)
CRS. STDNG: 107/119

– PERSONAL IN NATURE –

135646678 SGT HUNT S L
CRS: 133Z/00495/1 EVENT #6 E3 CN-90/CN
EVNT GRADE: 86.67 (39 of 45 PTS)
CRS AVG: 83.59 (555.85 of 665 PTS)
DEPT AVG: 78.17 (390.85 of 500 PTS)
CRS. STDNG: 105/117

– PERSONAL IN NATURE –

March 20, 1996

Spc. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(908)561-7215/(212)876-4639 EXT.138

Honorable William (Bill) Bradley
C/O Ms. Valincia
One Newark Centre
Newark, New Jersey 07102-5297

Dear Sir:

Enclosed is a final response to an investigation conducted by the Inspector General at Fort Benning, Georgia. Lt. Col. John Dykes, concluded that under the United States Army Infantry School Regulation 351-14, Section III, that I was not afforded appropriate due process during the recycle process – page (3). It is clearly stated that the Officer Candidate School did not show professional fortitude and had a disregard for the Military's Moral Code.

Located on page (2), first paragraph, the OCS (teachers) TAC are noted to have discussed my academic and physical training scores; however, maintained that it did not play a part in their decision making process. *One*

would ask himself, if academic and physical training were not apart of their decision making process, then why was it discussed at all? Moreover, no one can be certain why I was even asked to recycle the program, if they did not document the reason(s) in the first place. Only when they were challenged, then would they document an alternative loop hole!

Other OCS Candidates were allowed to have their due process of regulations, once it was determine that they were suspected of cheating on their Land Navigation Examination. The school's position was in accordance with the regulations. Now when an individual is recommended for recycle, his due process is some how over looked.

I would like be notified in writing of the contemplated action, reason for referral; permitted to rebut in writing to the course convening authority for final decision and/or Commissioned Officer in the United States Army. In this matter I have a ***legal right,*** *set in place by regulations!*

Sincerely yours

Spc. Sheldon Lamar Hunt

CC: *Col. William Hatchett – 321th MMC Baton Rouge, LA.*
Mrs. Michelle Y. Cromwell – Congress Coordinator Wash., D.C.
Honorable William Bradley – One Newark Centre, Newark, N.J.
Major General Michael Hendrix – Fort Benning, GA.
Adjutant General James E. Brinson – Fort Benning, GA.

October 30, 1995

Spc. Sheldon Lamar Hunt
SS# 135-64-6678
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(917)414-3362

SFC. Leticia Westlake
Assistant Inspector General
HQ. USA Infantry Center
Fort Benning, Georgia 31905

Dear SFC. Westlake,

On September 8, 1995 I was told that I would have to ("recycle") the Office Candidate School Program, due to my academic scores. This letter should serve as a formal documentation of charges I would like to bring up against the following individuals: Cpt. Charles H. Ogle; Cpt. David Cannon; and Lt. Col. Armbriter [sic].

I. Denial of a Candidate the opportunity to make a written complaint on counseling statements.

II. Placing Candidate under direst [sic], when signing documentations.

III. Denial of a Candidate the right to graduate.

IV. Mislead investigator, by providing inaccurate information.

The above named individuals had accumulated bias [sic] feelings about my academic, physical training, and leadership stabilities [sic] while I was in the OCS Program, making and [sic] unfair determination.

Cpt. Cannon, as the Company Commander felt that base [sic] on his assessment of my academic, physical training, and leadership abilities ("poor") that I should recycle the OCS

Program. I can categorically say, that Cpt. Cannon and the others' decision are bias [sic] in nature.

For example:

(A). The school's own academic average is seventy percentile [sic] (70%). My academic average is about an eighty percentile [sic] (80%), far above the minimum. So if someone's scores are the same as or above the school's minimum, then how can one make a decision base [sic] on academic average? It's not fair, it's not ethical, and it's clearly not right!

(B). My final AFPT examination was a 280, surely by The United State [sic] Army's standards, it is well above the minimum.

(C). I am presently a teacher in the New York City Public School System and I have been a teacher for the past six years. I have a Master's degree in education plus thirty credit hours in the field of education. With my background in this field I have experience and knowledge in evaluations. It is counterintuitive to state that I have "poor" Leadership evaluations.

*I was never allowed to write a written documentation on my behalf concerning, my own evaluations. In my opinion the school was trying to evade reproach. Documenting only what they (**Cpt. Charles H. Ogle**) can find wrong with my field training exercises, not looking at what they can find right . . . being subjective in their evaluations.*

The above information are objective statements that are base [sic] on facts and not opinions. The three individuals who are responsible for my decision to Chapter-Out of the program, due to my inability to file charges while I was still affiliated with the OCS Organization.

Cpt. Cannon and others has [sic] made statements about my overall assessment which are all relative. Basing my performance on the way they feel and not on the school's preset standards. If Cpt. Cannon and others' felt, that my academic performance was "low" then the school should raise their minimum academic, AFPT standards, and allow for fairness in the leadership evaluation process; making objective evaluations.

Using a sound ***objective methodology*** *for evaluation, is what I am concern [sic] about. I can say categorically that the school used an instrument of biases and demagogy against me. If you set in place, your own standards and feeling to help come to a conclusion about an individual(s). Then one is wrong!*

Other students with both a lower academic and AFPT scores were allowed to graduate. Therefore, I can say without any hesitation or reservation in my mind what so ever that I was discriminated against.

Sincerely your's

/s/ Spc. Sheldon Lamar Hunt
Spc. Sheldon Lamar Hunt

September 18, 1995

Senior Officer Candidate
Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
Telephone: (917) 414-3362

Colonel John Lewis
11th Infantry Regimental Commander
Fort Benning, Georgia 31905

"While in the Army there is little tolerance for freedom of expression . . . No Voice!"

Dear Sir:

On September 8, 1995 at 15:00 hours I was told that I would have to recycle the OCS Program. The reasons given were: no leadership abilities (which is indicated by negative evaluations), and a poor academic average.

Hello, my name is Sheldon Lamar Hunt I am in the United States Army Reserve, a New York City Public School Teacher for 6 years, with a Master's Degree plus thirty credit hours in education, agriculture, environmental chemistry hazardous waste. Worked for New Jersey Department of Community Affairs in our State Capitol Trenton, as a State Inspector of Hazardous Waste, to keep our nation safe from pollution. There is no doubt that I am a leader in my community as well as the nation.

Attended: Louisiana State University
Southern University and Agricultural & Mechanical College
North Carolina Agricultural & Technical State University

After two weeks, left in the program, I was told that I would have to recycle for both *leadership* and *academic average*. At this point in the program, all of the training had been completed, except for the professional development classes and the out process procedures.

As I dissected the allegations of both leadership and a poor academic average, I was very dismayed.

I. Academic Average

A. I maintained a 70% or better academic average which is required

So, categorically and counterintuitively one should not / could not, base or make a determination on academic average.

II. Leadership Evaluations (TAC Evaluations)

A. Pre-Observation / Observation / Post-Observation Consultation

As an educator, as well as an evaluator of students and other teachers I am a leading authority in our nation on Program Evaluation.

Throughout the course I believe that I was systematically targeted for failure. Based on all my evaluations they describe my leadership capabilities as totally negative. Focussing on only what can be found wrong with in my leadership training assessment.

For example: As the Student Companys' 1st Sergeant, I was given a pre-observation consultation. In the post-observation consultation, I was given a weak evaluation for events that

occurred (candidates talking during break procedures). The candidates talking during break procedures was not outlined in the pre-observation consultation and therefore I should not be held totally responsible. Moreover, there were both the Student CO & XO, surely the responsibility should have been equally distribute [sic].

In any circumstances, one can take a situation and find what is wrong. Surely we can take a situation and find what is right! If one would take a scale, an [sic] examine my evaluations you would find that there is no positive statement(s) written. One would question the validity of there [sic] findings. While in a leadership position, the TAC's only wrote a narrow spectrum of the total picture. I was ever [sic] allowed to write a statement on how and what I felt about my own evaluations. Giving input to the *pros* and *cons* to any of the field exercises.

Making my case was relentless, *while in the Army there is little tolerance for freedom of expression . . . No Voice!* I had an option to recycle or Chapter out of the program. In order for me to be heard I had to Chapter out. In order for me to be understood I had to write this letter.

I feel that my past record speak [sic] for itself. Again I'm a leader in my community to the great future leaders I now teach and a great Public Servant. I truly and sincerely love the Army and I would like to work to my full potential in the United States Army Reserve.

I believe that it was unfair for me to have been taken out of the class at this late date and asked to recycle; moreover, I felt that I was picked on. A kind of a TAC's game, to see if they recycle or to encourage me to Chapter

out . . . I become their trophy. The teacher, the Public Leader a person who mastered it all excepted [sic] OCS!

On September 22, 1995 Class 4-95 will graduate, I would like to join my class and graduate as well. I have completed the entire course, which ended with the twelve mile road march and meant [sic] all the necessary requirements. An individual may be excused for up to seventeen days of training, of which I had only missed four days.

Sincerely your's [sic]

/s/ Sheldon Lamar Hunt
Sheldon Lamar Hunt

Enclosure: Record of Disenrollment From Officer Candidate Voluntary Release From Officer Candidate School Request For Disposition Prior to Graduation

cc:
Honorable Senator Bill Bradley – 1 Newark Centre, 16 Floor,
Newark, NJ 07102
Colonel John Lewis – 11th Inf. Ft. Benning, Ga. 31905
Colonel William Mike Hatchett – 321st MMC Baton Rouge, La. 27411

November 1, 1995

Spc. Sheldon Lamar Hunt
SS# 135-64-6678
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(917) 414-3362 / (908) 752-2199

Senator William (Bill) Bradley
One Newark Centre 16th Floor
Newark, New Jersey 07102
Phone# (201) 639-2860
Fax# (201) 639-2878

Dear Senator Bill Bradley,

On September 8, 1995, I was told that I would have to "recycle" the Office Candidate School Program, due to my academic scores. This letter should serve as a formal documentation of charges I would like to bring up against the following individuals: Cpt. Charles H. Ogle; Cpt. David Cannon; and Lt. Col. Armbriter. [sic]

I. *Denial of a Candidate the opportunity to make a written complaint on counseling statements.*

II. *Placing Candidate under duress, when signing documentations.*

III. *Denial of a Candidate the right to graduate.*

IV. *Mislead investigator, by providing inaccurate information.*

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For example:

(A). The school's own academic average is seventy percent (70%). My academic average is about an eighty-three percent (83%), far above the minimum. So if someone's scores are the same as or above the school's minimum, then how can one make a decision base [sic] on academic average? It's not fair, it's not ethical, and it's clearly not right!

(B). My final AFPT examination was a 280. Surely by the United State [sic] Army's standards, it is well above the minimum.

(C). I am presently a teacher in the New York City Public School System and I have been a teacher for the past six years. I have a Master's degree plus thirty credit hours in the field of education. With my background in this field I have experience and knowledge in evaluations. It is counterintuitive to state that I have "poor" Leadership evaluations.

*I was never allowed to write a written documentation on my behalf concerning, my own evaluations. In my opinion the school was trying to evade reproach. Documenting only what he (**Cpt. Charles H. Ogle**) can find wrong with my field training exercises, not looking at what they can find right . . . being subjective in their evaluations.*

The above information are objective statements that are base [sic] on facts and not opinions. The three individuals are

responsible for my decision to Chapter-Out of the program, due to my inability to file charges while I was still affiliated with the OCS Organization.

Cpt. Cannon and others have made statements about my overall assessments which are all relative. Basing my performance on the way they feel and not on the school's preset standards. If Cpt. Cannon and others' felt that my academic performance was "low" then the school should raise their minimum academic average, AFPT standards, and allow for fairness in the leadership evaluation process; making objective evaluations.

Using a sound **objective methodology** *for evaluation, is what I am concerned about. I can say categorically that the school used an instrument of biases and demagogy against me. If you set in place your own standards and feeling [sic] to help come to a conclusion about an individual(s), then one is wrong!*

Other students with both a lower academic and AFPT scores were allowed to graduate. Therefore, I can say without any hesitation or reservation in my mind what so ever [sic] that I was discriminated against.

Sincerely yours,

Spc. Sheldon Lamar Hunt

June 19, 1996

Spc. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Major Gregory Fortson
United States Army Training Command
Inspector General Headquarters
Fort Monroe, VA 23651-5000

Dear Sir:

At this time you should have had the opportunity to evaluated [sic] the packet that I had sent to you several days ago. Please pay close attention to the *Request for Disposition Prior to Graduation,* in the second paragraph Cpt. Cannon writes, "OC Hunt does not desire to recycle into OCS Class 1-96 and pursue a commission." Moreover, Memorandum THRU Commander (box checked-Lack of Commitment).

I. In the letter Request for Disposition Prior to Graduation.

   A. Cpt. Cannon states that, Spc. Hunt does not wants [sic] to be recycled.

      1. The above is to point out that Cpt. Cannon's intent was to have me recycled.

II. MEMORANDUM THRU Commander.

   A. It is counter intuitive for an individual to check Lack of Commitment, who was due to graduate in just nine days.

      1. I was ordered to check Lack of Commitment, by Sgt. Calvin Glenn.

a. I had inform [sic] him that it was not due to lack of commitment; however, I felt that I had been missed treated [sic] (alternately discriminated against).

b. Often times the TAC used their position of authority, placing candidates under duress when signing documentation.

My position is that OCS did not give me due process of regulations, and because they did not follow proper military regulations and procedures that their claim of irrevocability now be revocable.

At the time of my being recycled there were know [sic] clear and / or decisive reason(s) to recycle me. Cpt. David Cannon, explained to me that I was being recycled because of my grades 83% average while the class as a whole held a 92% average, only to recant his statement to say that I had poor PT scores (AFPT 280). Lt. Col. Scott L. Armbrister in his letter – which was certified to my home – 21 March 96, **writes for the first time his reasons to recycle me**. It is clear why regulation 351-14 section III, was written, to avoid the above.

Why would Cpt. Cannon recycle me without first giving me my due process and why did my complaint initiate a review of the OCS policy? Ask yourself, what was he trying to avoid or evade? Colonel John R. Reitzell states, that when I requested to chapter-out, the recycling action stop. [sic] Col. Reitzell statements are not withstanding; because, the recycling action should have taken place well before the intent to recycle. OCS (The Battalion Commander) can not violate regulations when it is convenient for (him) them.

It is a shame that an individual who is willing to fight for Freedom, Justice, and Equality around the world cannot enjoy those very same liberties here at home!

Thank You for Your Cooperation to This Matter.

Sincerely yours,

/s/ Sheldon Lamar Hunt
Spc. Sheldon Lamar Hunt

September 27, 1996

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Colonel Charles E. Beckwith
Headquarters United States Army Training &
Doctrine Command
Fort Monroe, Virginia 23651-5000

Dear Sir:

I have read your final report sent to my home on September 24, 1996. I find that there are many concerns not yet dealt with, so as far as my grievance.

You have stated that there were many situations for law and regulation to provide redress. In my situation at OCS there were none (only to be told that I had been recycled), "it was determined that (I was) not afforded appropriate due process during the recycle process", according to The United States Army Infantry School Regulation 351-14, Section III,/Lt. Col. John M. Dykes IG. So, it is a fact that

the recycling action was not appropriate by regulation. If it is inappropriate by regulation, then how can it be sufficient by law? How can TRADOC Staff Judge Advocate, determine that the actions taken were legally sufficient; moreover, by what law was he sighting [sic], if he is to make a correct determination on what is legally sufficient?

Lt. Col. Scott L. Armbrister stated on 21March96, that my, "complaint initiated a review of OCS policy and allows an appeal." I was not given the opportunity to speak at all levels, as you indicated in your letter, that I had been. Ask yourself this question: If you were told, at this time you are recycled. Stop training, get your things and move into another building. How can one have the opportunity to speak at all levels? Furthermore, how can one defend himself, if he is told that he has been recycled, based on academic average, AFPT, and leadership, having no bases to support their finding. Only when he the Battalion Commander was place [sic] under pressure and six months later did he document his reasons . . . that is ludicrous.

If there is inappropriate due process, by regulation; OCS failure to document the reason(s) I was being recycled, prior to me being recycled; and the Battalion Commander's written statement in which he indicated that he had to bring the school in line and allow for an appeal. Provides a legal base for my allegations.

The very same right that gives the Battalion Commander the right to recycle me, is the very same unmitigated right in which I have to appropriate due process; and if, I was not afforded appropriate due process by regulation,

then I was not afforded appropriate due process by law! The question is: are you willing and ready to uphold the regulation?

Thank You For Your Cooperation to This Matter.

Sheldon Lamar Hunt

cc.:
Honable [sic] Togo West
Secretary of the Army

January 3, 1995

Spc. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
Tel. (908)561-7215
Cell. (917)414-3362

Michelle Y. Cromwell
Congressional Coordinator/
Congressional Inquiry Division
Office, Chief of Legislative Liaison
Department of The Army/
Office Chief Legislative Liaison
1600 Army Pentagon
Washington, D.C. 20310-1600

Dear Ms. Michelle Y. Cromwell:

In my correspondence on November 1, 1995. I had listed and explained three areas in question, concerning Recycling of the O.C.S. Program. They were ***Academic Average*** and ***AFPT*** which are examinations that are objective, and there is no doubt to their validity. The third concern is ***Leadership***. Leadership is an area that is subjective in nature, and most often is based on one's opinion.

The Officers Candidate School's Motto is "Standards No Compromise," in keeping with the school's own motto this documentation will list, discuss, and explain Leadership – focussing on the methodologies that are unethical and maybe illegal practices of evaluation.

I. In each leadership event, I was ordered to circle concur and sign either by Senior TAC Cpt. Leonard or Cpt. Charles H. Ogle.

   A. regardless if, the statements written were false.

      It was explained to me that, what the Officer said, is to say, what had been written.

      1. placing me under direst [sic], by in fact forcing me to circle concur and signing the counseling statements. Even though, what had been signed may not have reflect [sic], what actually happen [sic].

II. I was not allowed to write in the allotted space for my concerns and extenuating circumstances.

   A. it is unfortunate to label me as "poor" in leadership positions without giving me fair and equable opportunity to discuss in writing my own leadership evaluations. Then to come to a conclusion, by manipulation of the Pro's & Con's of one's evaluation.

Sincerely yours

Spc. Sheldon Lamar Hunt
Masters of Education

January 29, 1996

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(908)561-7215

Adjutant General James E. Brinson
Department of the Army
United States Army Infantry Center
Fort Benning, Georgia 31905-5000

Dear Sir:

I received of your letter concerning my letter "Recycle of the Officer Candidate School". I have read your letter carefully and outlined statements of concern. Now is the time to either Put-up or Shut-up and discuss the real concerns! Don't hide behind a shield of deceitfulness and alter the total reality of the complaint.

You first have to realize that you are dealing with an individual who understands well the meaning and process of evaluation. You can no longer afford to be reckless and derelict in your reporting of information. I found that you are incompetent in your representation of the facts.

I can say the above statements, because the Constitution of the United States, Guarantees me The Freedom of Speech, under the First Amendment.

It is unfortunate; however, that individuals can in an authoritarian position make alleged statements without any documentation to support their findings.

I. **"For leadership evaluations, the officer candidate is provided with Leadership Self-Assessment form that must be completed and is made a part of the permanent training record."**

A. The Self-Assessment form is given to the candidate, after the leadership position held has been completed. Both the candidate assessment and the TAC-teacher's-assessment are discussed in a counseling session. What the session failed to accomplish is to allow the candidate the opportunity to express his/her written concerns based on the TAC said evaluations.

1. For Example: if the teacher say [sic], you failed to accept responsibility. I was not allowed to document my side of the story. What makes OCS feel that they are above reproach?

What is seriously wrong with this process is that, one does not have any real say in the evaluation, except for the TAC.

II. **"The candidate is not discouraged in any way from writing a rebuttal to his counseling statement or leadership evaluation believed to be in error of the candidate's actual performance."**

A. I categorically state that I was under duress, when signing counseling statements by Cpt. Charles H. Ogle, Cpt. Leonard and Cpt. David Cannon. Moreover, in order to file charges while I was in OCS I had to disenrole, because the Inspector General's Office would not handle my case, until then.

It is preposterous to think that a candidate can not be discouraged from writing a rebuttal when signing a counseling statement. I was very much discouraged and out right ordered not to circle *non-concur* and I was not allowed to document the truth. You see . . . it was explained that by signing concur you are agreeing to what had been said at the counseling session; regardless if, what had been written did not actually take place! Moreover, I can express myself in writing very well and many individuals may have felt that, if they would have allowed me to write, it may have been damaging to their falsified counseling statements!

III. **"The first ten weeks of OCS is designed to place the candidate under stress. Much of this accomplish [sic] by strict adherence to common military customs and courtesies. Discipline is used as a measure to test the candidate's mettle and ability to handle stressful, unfamiliar situations. Candidates that are unfamiliar with this level of discipline may view it as being put under stress".**

A. There is no correlation between my tenure at OCS to what happen [sic] at OCS. I have proven my tenacity by completing 12 weeks and four days of the 14 week course!

As The Adjutant General you should present all the facts. Please provide to Senator Bill Bradley's Office and any other federal agencies that maybe [sic] involved in the case with a copy of the actual evaluations in order to help them determine the validly of both your and my statements, to resolve any improprieties.

A.G. Brinson, never contacted me by telephone or mail. It is impossible to know the contents of the situation without first opening a line of communications with both parties involved to find out the root cause of the problems. So, one can clearly see the very nature of your biases in reporting important information!

Sincerely yours

Sheldon Lamar Hunt
Master's of Education

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY
INFANTRY SCHOOL
FORT BENNING, GEORGIA 31905-5006

[Logo] REPLY TO ATTENTION OF [Logo]

March 29, 1996

Office of the Chief of Staff

Specialist Sheldon L. Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Dear Specialist Hunt:

I am responding to your March 20, 1996 letter to Major General Hendrix concerning the findings of the Fort Benning Inspector General's investigation into allegations against the Officer Candidate School (OCS).

I thoroughly reviewed your previous letters regarding your OCS experience, findings from the Ft. Benning Inspector General's (IG) office, your student personnel

file from OCS, and applicable Fort Benning and Department of the Army Regulations. I have determined that you were treated fairly by the OCS Chain of Command and were in no way singled out for unjust or discriminatory treatment.

The IG determined that you were verbally informed that the OCS Chain of Command recommended that you be recycled into a follow-on class. You were fully informed of the actions being taken throughout the process and were provided the opportunity to speak on your own behalf at all levels. The recycle action stopped, however, when you informed the Chain of Command that you intended to request voluntary relief from the course. You signed a letter requesting relief and acknowledged, in writing, that your decision was irrevocable. You did not complete the Program of Instruction for OCS and therefore cannot receive a commission.

Your decision to leave OCS before completing the requirements for commissioning does not prevent you from reapplying to attend the OCS program and earn a commission. Army Regulations (AR) 351-5, "United States Army Officer Candidate School" and Reserve Components Personnel Update AR 140-50 outline the procedures you must follow to request admission to OCS. Should you desire to attend OCS and earn a commission, I encourage you to consult with your unit Chain of Command and reapply.

Sincerely,

/s/ John R. Reitzell
John R. Reitzell
Colonel, U.S. Army
Chief of Staff

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF LEGISLATIVE LIAISON
1600 ARMY PENTAGON
WASHINGTON, DC 20310-1600
March 28, 1996

[Logo] [Logo]

Specialist Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063

Dear Specialist Hunt:

This replies to your inquiry concerning the Officer Candidate School.

Your interest in this matter is appreciated. To be of assistance, I have forwarded the documents you provided to Army officials at Fort Benning, Georgia. You may be assured that this matter will be thoroughly reviewed and acted on appropriately. You will be directly advised on the final decision on this request by officials at Fort Benning.

Sincerely,

/s/ Michelle Y. Cromwell
Michelle Y. Cromwell
Comgressional [sic] Coordinator
Congressional Inquiry Division

April 8, 1996

Specialist Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Colonel John R. Reitzell
Headquarters United States Army Infantry School
Office of the Chief of Staff
Fort Benning, Georgia 31905-5064

Dear Sir:

I would like to clear up many discrepancies in which you had documented on 29 March 96. Your correspondence suggest that, you did not fully understand the chronological turn of events that had transpired and/or you were not fully informed of the nature of the situation.

On September 8, 1995 around 14:00 hours, I was told verbally that I had been recycled, and to stop training, by Lt. Col. Scott L. Armbrister. In fact, no longer apart [sic] of the Class of 4-95 and segregated away from the class into another building, by Cpt. David Cannon.

In a letter written 21 March 96, and certified to my home. Lt. Col. Armbrister writes his explanation and first time documentation of his reasons for recycle states, "My decision to recycle you to the next Office [sic] Candidate School was based on your weak leadership performance. Specifically, you demonstrated an inability to follow instructions and accept accountability for your actions." Lt. Col. Armbrister continues, "Although you decided to voluntarily drop from the course rather than recycle, your complaint initiated a review of our recycle policy. Effective 1 December 95, *the Recycle Appeal Policy was revised to bring the Office* [sic] *Candidate School in line with*

*the United States Army Infantry School and allows an appeal, **(How?)** in writing to the Commander, 11th Infantry Regiment **(When?)** within 48 hours of intent to recycle.*

Colonel Reitzell, you stated, "The IG. determined that you were verbally informed that the OCS Chain of Command recommended that you be [sic] recycled into a follow-on class." and that, "The recycle action stopped, however, when you informed the Chain of command that you intended to request voluntary relief from the course."

The discrepancies occurs with two words ***verbally & recommended*** (past tense). Lt. Col. John M. Dykes states, "Based on the inquiry it was determined that you, (Spc. Hunt) were not afforded appropriate due process during the recycle process. United States Army Infantry School Regulation 351-14, Section III, states that before a recommendation for recycle is forwarded to the course convening authority, the student will be notified **(How?)** in writing of the contemplated action and the reasons for referral. The notification will advise the student that he may submit a rebuttal of matter for consideration **(When?)** within 48 hours after receipt of notification. *The student will immediately reply by endorsement, acknowledging receipt and will indicate his intentions concerning rebuttal, The Chain of Command will submit recommendations, the student's notification and response, and any other evidence to the course convening authority for final decision." He continues, "The evidence indicated that you were notified of the recycle action verbally and not in writing. Additionally, you were not permitted to rebut the recycle action in writing as directed by the regulation."*

Colonel Reitzell, your statements contradicts [sic] the above supporting evidence. I was not afforded my due process and my only alternative was to Chapter-out in order to file charges! There was no recycle action or recommendation taking place, in fact I was already recycled without any due process. Lt. Col. Armbrister acknowledges, that he did not follow the Recycle Appeal Policy, bringing OCS on-line with the rest of the Infantry School!

So, you can not say the recycle action stopped, when there was no action in the first place! *Point-blank the OCS Chain of Command failed to follow instructions and accept accountability for their actions!*

OCS, allows for twelve consecutive days of missed training exercise, I only missed nine consecutive days. I had completed all of the educational (83%), the A.F.P.T. (280), the twelve mile road march, and the medical examination. With all of the evidence presented, the writing, the patience, and the pain! I should be granted a commission!

Sincerely yours

/s/ Sheldon Lamar Hunt
Specialist Sheldon Lamar Hunt
Master's of Education

April 1, 1995

Spc. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Lt. Col. Scott L. Armbrister
Headquarters, 3rd Battalion (OCS) 11th Infantry
Fort Benning, Georgia 31905

Dear Sir:

It has been seven months and I still have not been afforded my due process. If I were to recycle the program, the issue would not have been resolved.

I completed the educational, the A.F.P.T., and the twelve mile road march. Captain David Cannon, as the Company Commander (should have known better) failed to uphold regulation 351-14, Section III.

Due to this evidence, I would like to be granted a commission (given my class picture(s) and any other paraphernalia associated with the Class of 4-95 in which I had already paid for via OCS Council), or begin with the due process procedures as directed by regulations without any additional delays. I do not believe that there is any further issue(s) to be examined, and let us bring about closure to this matter.

Sincerely yours

/s/ Sheldon Lamar Hunt
Spc. Sheldon Lamar Hunt

CC: Col. William Hatchett – 321th MMC Baton Rouge, LA.
Mrs. Michelle Y. Cromwell – Congress Coordinator Wash., D.C.
Honorable William Bradley – One Newark Centre, Newark, N.J.
Major General Michael Hendrix – Fort Benning, Georgia
Adjutans General James E. Brinson – For Benning, Georgia

September 4, 1996

Spc. Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Attention Honable [sic] Togo West
c/o Major David Haught
Secretary of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Dear Sir:

Please pay close attention to the ***Request for Disposition Prior to Graduation,*** in the second paragraph Cpt. Cannon writes, "OC Hunt does not desire to recycle into OCS Class 1-96 and pursue a commission." Moreover, Memorandum THRU Commander (box checked-Lack of Commitment).

I. In the letter Request for Disposition Prior to Graduation.

A. Cpt. Cannon states that, Spc. Hunt does not wants [sic] to be recycled.

1. The above is to point out that Cpt. Cannon's intent was to have me recycled.

II. MEMORANDUM THRU Commander.

A. It is counter intuitive for an individual to check Lack of Commitment, who was due to graduate in just nine days.

1. I was ordered to check Lack of Commitment, by Sgt. Calvin Glenn.

a. I had inform him that it was not due to lack of commitment; however, I felt that I had been missed [sic] treated (alternately discriminated against).

b. Often times the TAC used their position of authority, placing candidates under duress when signing documentation.

My position is that OCS did not give me due process of regulations, and because they did not follow proper military regulations and procedures that their claim of irrevocability now be revocable.

At the time of my being recycled there were know [sic] clear and/or decisive reason(s) to recycle me. Cpt. David Cannon, explained to me that I was being recycled because of my grades 83% average while the class as a whole held a 92% average, only to recant his statement to say that I had poor PT scores (AFPT 280). Lt Col. Scott L. Armbrister in his letter – which was certified to my home – 21 March 96, **writes for the first time his reasons to**

recycle me. It is clear why regulation 351-14 section III, was written, to avoid the above.

Why would Cpt. Cannon recycle me without first giving me my due process and why did my complaint initiate a review of the OCS policy? Ask yourself, what was he trying to avoid or evade? Colonel John R. Reitzell states, that when I requested to chapter-out, the recycling action stop. Col. Reitzell statements are not withstanding; because, the recycling action should have taken place well before the intent to recycle. OCS (The Battalion Commander) can not violate regulations when it is convenient for (him) them.

It is a shame that an individual who is willing to fight for Freedom, Justice, and Equality around the world cannot enjoy those very same liberties here at home!

Thank You for Your Cooperation to This Matter.

Sincerely yours,

/s/ Sheldon Lamar Hunt
Spc. Sheldon Lamar Hunt

April 9, 1997

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Honorable Dickinson R. DeBevoise
United States District Court Judge **Civil Case 97-4**
Martin Luther King Jr. Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07102

Dear Honorable Dickinson R. DeBevoise:

This document should serve as record to ***Clarify The Unclarifyable.***

This Civil Case is about due process. Ms. Susan C. Cassell, Assistant U. S. Attorney, in her attempts to dismiss this case, has not reconciled any of the problems; however, recondited many of the important facts of this case.

Army Regulation (351-5, para 5-13), in which Lt. Col. Scott L. Armbrister (the Individual) had not complied with, is explicit. The Defendant Armbrister, had documented and certified a letter to my home, in which he explains his reasons for "Recycle":

> *My decision to recycle you to the next Officer School class was based on your weak leadership performance.* Specifically, you demonstrated an inability to follow instructions and accept accountability for your actions. At no time were you discouraged from writing a rebuttal to your leadership evaluations or counseling statements. Both the Leadership Self-Assessment Form and the General Counseling Form allow for individual input.

> I was surprised to read in your letter that, "in order to file charges while I was in OCS I had to disenrole [sic], because the Inspector General's Office would not handle my case, until then." The Inspector General will receive and take action on any complaint filed, regardless of the status of the individual.
>
> *Although you decided to voluntarily drop from the course rather than recycle, Your complaint initiated a review of our recycle policy. Effective 1 December 1995, the Recycle Appeal Policy was revised to bring the Officer Candidate School in line with the United States Army Infantry School and allows an appeal in writing, to the Commander, 11th Infantry Regiment within 48 hour of intent to recycle.*

The above statements by Lt. Col. Armbrister (the individual) indicates that he had recycled the plaintiff. The defendant did not make a statement of " 'proposed' recycle recommendation", as suggested by Attorney Cassell. In fact, the defendant stated his decision. The plaintiff was told that, (you are no longer apart of the Class of 4-95, stop training and move into another building), by the Defendants Cannon and Armbrister. The Defendant Armbrister stated that he brought the school in-line with the United States Army Infantry School Regulation (135-14, Section III), revising the Recycle Appeal Policy.

In order for one to bring the school in-line with the United States Army Infantry School Regulation, then one had to be out of line with the United States Infantry School Regulation, working independently of the military. Attorney Susan Cassell's reasons to dismiss this case contradicts her own client's March 21, 96 statements.

The plaintiff should have been relieved from duty based upon his leadership, according to Army Regulation (140-50). This would suggest that a person was either ordered, commanded, or placed under duress for disenrollment. One would not find the term "lack of commitment" in the regulation; however, you would find "lack of motivation", for reason of relief accompanied with due process procedures. The plaintiff checking "lack of commitment" is inconsistent with the regulation or anything being voluntary.

The plaintiff maintains that he was ordered to check "lack of commitment," by Sgt. Calvin Glenn. The plaintiff wanted to check "other" on his resignation application, but was told that, "you cannot check 'other', you will check 'lack of commitment' ",. This is consistent, however, with the counseling statements, in which the plaintiff was not allowed to write a rebuttal, forcing him to sign, by placing him under duress in fear that it may undermine their falsified counseling documentations.

In the above statements the federal courts have the obligation to act in this case.

Sincerely Yours

Sheldon Lamar Hunt

Enclosure: Lt Col. Scott L. Armbrister March 21, 97 letter to S. L. Hunt

January 30, 1997

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(908) 561-7215

Military Army Review Board
1941 Jefferson Davis Highway Bldg. #4, Room 219
Arlington, Virginia 22202-4508
Tel.: 703-609-1621

Dear Sir:

Hello my name is Sheldon Lamar Hunt, after one year three months and going though the chain of command, first starting with: The Inspector General's Office at Fort Benning, Ga. (Lt. Colonel John M. Dykes); The Office of the Chief of Staff at Fort Benning, Ga. (Colonel John R. Reitzell); The United States Army Doctrine and Training Command at Fort Monroe, Va. (Colonel Charles E. Beckwith IG); and The Inspector General's Office at the Pentagon, Wash., D.C. (Ms. A. Dale Culp), my situation has not been redress.

On September 8, 1995 I was told that I had been recycled in The Officer Candidate School (OCS). The focal point of this matter is that, I was not given the right to rebut the recycling action taken my [sic] the Battalion Commander Lt. Col. Scott L. Armbrister and the Company Commander Captain David Cannon, as prescribed by regulation 351-14, Section III. I was not informed of my rights and given appropriated due process as it has been reported by Lt. Colonel John M. Dykes Inspector General, Fort Benning, Ga. 5Feb96.

Lt. Colonel Scott L. Armbrister OCS Battalion Commander acknowledges, that he did not follow the Recycle Appeal Policy, bringing OCS on-line with the rest of the infantry school. In his letter he certified to my home on 20March96. Only after, I had filed a complaint with Fort Benning's IG did the Battalion Commander document his reasons to recycle me, and not prior to the recycling action. This is very important; because, it solidifies my claim and tells of a system that does not have any respect for what is morally and legally correct.

The above Army Agencies are not willing to redress this issue, by enforcing the regulation. I was told by Ms. A. Dale Culp, that the act of being recycled or chaptering-out of the program was my due process. Her and many others' statements contradict the very same regulation that they swore to uphold, and that was set in place to provide protection under the law for an Officer Candidate to avoid a rush to judgment decision like the one made by the Battalion Commander such, as in this case.

As a soldier, a teacher of chemistry & physics, a taxes [sic] payer, and as an American Citizen, I call upon your officer to redress the appropriate due process issue. I was eight days away from being a Commission [sic] Officer, having completed the educational 83%, AFPT-280, and medical. The investigations have been completed and based on the evidence, I would like a commission as an Officer in the United States Army.

Sincerely yours

Specialist Sheldon Lamar

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552

(Please read instructions on reverse side BEFORE completing application.)

1. APPLICANT DATA
   a. BRANCH OF SERVICE *(X one)*
      [ ] (1) ARMY
      [X] (2) NAVY
      [ ] (3) AIR FORCE
      [ ] (4) MARINE CORPS
      [ ] (5) COAST GUARD

   b. NAME *(Last, First, Middle Initial) (Please print)*
      Hunt, Sheldon Lamar

   c. PRESENT PAY GRADE
      E-4

   d. SERVICE NUMBER *(if applicable)*
      USAR

   e. SSN
      135-64-6678

2. TYPE OF DISCHARGE *(If by court-martial, state type of court.)*

3. PRESENT STATUS, IF ANY, WITH RESPECT TO THE ARMED SERVICES *(Active duty, Retired, Reserve, etc.)*
   Active Reserve

4. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY
   12 September 95

5. ORGANIZATION AT TIME OF ALLEGED ERROR IN RECORD
Officer Candidate School
3rd Battalion (OCS) 11th Infantry
Fort Benning, Ga. 31905

6. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. *(No expense to the Government) (X one)*
[X] a. YES [ ] v. NO

7. COUNSEL *(If any)*
a. NAME *(Last, First, Middle Initial)*
b. ADDRESS *(Street, Apartment Number, City, State and Zip Code)*

8. I REQUEST THE FOLLOWING CORRECTION OF ERROR OR INJUSTICE:
I was unjustly recommended for recycle of OCS. I was not given appropriate due process of Regulation 351-14, Section III.

9. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST IN THE FOLLOWING PARTICULARS:
While attending OCS in September 1995, I encountered what I believed to be deliberate attacks on my leadership abilities and felt that I had been targeted for failure. I was given a number of leadership counselings and ordered to sign them without any opportunities to rebut. Due to the attitude of my raters, the strict and unavailing behaviors of the TACs, I felt compelled to sign the counselings without any rebuttal or response.

10. IN SUPPORT OF THIS APPLICATION I SUBMIT AS EVIDENCE THE FOLLOWING: *(If Veterans Administration records are pertinent to your case, give Regional Office location and Claim Number.)*

11. ALLEGED ERROR OR INJUSTICE

    a. DATE OF DISCOVERY
    b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED. STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THIS APPLICATION.

12. APPLICANT MUST SIGN IN ITEM 16. IF THE RECORD IN QUESTION IS THAT OF A DECEASED OR INCOMPETENT PERSON, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY APPLICATION. IF APPLICATION IS SIGNED BY OTHER THAN APPLICANT, INDICATE RELATIONSHIP OR STATUS BY MARKING APPROPRIATE BOX.

    [ ] a. SPOUSE [ ] b. WIDOW

    [ ] c. WIDOWER [ ] d. NEXT OF KIN

    [ ] e. LEGAL REP [ ] f. OTHER *(Specify)*

13. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. *(U.S. Code, Title 18, Sec. 287, 1001, provides a penalty of not more than $10,000 fine or not more than 5 years imprisonment or both.)*

14. COMPLETE CURRENT ADDRESS, INCLUDING ZIP CODE *(Applicant should forward notification of all changes of address*
    405 Clinton Avenue
    Plainfield, New Jersey 07063-1409

15. DATE SIGNED

16. SIGNATURE *(Applicant must sign here.)*

DOCUMENT NUMBER
(Do not writ in this space)

Previous editions are obsolete.

DD Form 149, AUG 93

INSTRUCTIONS

(All data should be typed or printed)

1. For detailed information see: Air Force Regulation 31-3; Army Regulation 15-185; Coast Guard, Code of Federal Regulations; Title 33, Part 52; or Navy, NAVEXOS P-473, as revised.

2. Submit only original of this form.

3. Complete all items. If the question is not applicable, mark "None."

4. If space is insufficient, use "Remarks" or attach additional sheet.

5. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.

6. List all attachments and enclosures.

7. ITEMS 6 AND 7. Personal appearance of you and your witnesses or representation by counsel is not required to ensure full and impartial consideration of applications. Appearances and representations are permitted, at no expense to the Government, when a hearing is authorized.

8. ITEM 8. State the specific correction of record desired.

9. ITEM 9. In order to justify correction of a military record, it is necessary for you to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. Evidence may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting application. All evidence not already included in your record must be submitted by you. The responsibility for securing new evidence rests with you.

10. ITEM 11. 10 U.S.C. 1552b provides that no correction may be made unless request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY

(For Active Duty Personnel)
Army Board for Correction of Military Records
Department of the Army, 2nd Floor
1941 Jefferson Davis Highway
Arlington, VA 22202-4508

(For Other than Active Duty Personnel)
CO, USARPERCEN
ATTN: DARP-VSA-A
9700 Page Blvd.
St. Louis, MO 63132-5200

COAST GUARD

Chairman
Board for Correction of Military Records (C-60)
Department of Transportation
400 7th St., SW
Washington, DC 20590

NAVY AND MARINE CORPS

Board for Correction of Naval Records
Department of the Navy
Washington, DC 20370-5100

AIR FORCE

Board for Correction of Air Force Records
ATTN: SAF/MIBR
550-C Street West
A Wing, Basement
Randolph AFB, TX 78150-4722

17. REMARKS *(Applicant has exhausted all administrative channels in seeking this correction and has been counseled by a representative of his/her servicing military personnel office. (Applicable only to active duty and reserve personnel.))*

Dear Sir:

After one year three months and going though the chain of command, first starting with: The Inspector General's Office at Fort Benning, Ga. (Lt. Colonel John M. Dykes); The Office of the Chief of Staff at Fort Benning, Ga. (Colonel John R. Reitzell); The United States Army Doctrine and Training Command at Fort Monroe, Va. (Colonel Charles E. Beckwith IG); and The Inspector General's Office at the Pentagon, Wash., D.C. (Ms. A. Dale Culp), my situation has not been redress. [sic]

September 27, 1996

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409

Major G. Fortson
Headquarters United States Army Training &
Doctrine Command
Fort Monroe, Virginia 23651-5000

Dear Sir:

I had read your final report sent to my home on September 24, 1996. I find that there are many concerns not yet dealt with, so as far as my grievance.

You had stated that there were many situations for law and regulation to provide redress. In my situation at OCS there were none (***only to be told that I had been recycled***), "it was determined that (I was) not afforded appropriate due process during the recycle process", according to The United States Army Infantry School Regulation 351-14, Section III,/Lt. Col. John M. Dykes IG. So, it is a fact that the recycling action was not appropriate by regulation. If it is inappropriate by regulation, then how can it be sufficient by law? How can TRADOC Staff Judge Advocate, determine that the actions taken were legally sufficient; moreover, by what law was he sighting [sic], if he is to make a correct determination on what is legally sufficient?

Lt. Col. Scott L. Armbrister stated on 21March96, that my, "***complaint initiated a review of OCS policy and allows an appeal.***" I was not given the opportunity to speak at

all levels, as you indicated in your letter, that I had been. Ask yourself this question: If you were told, at this time you are recycled. Stop training, get your things and move into another building. How can one have the opportunity to speak at all levels? Furthermore, how can one defend himself, if he is told that he has been recycled, based on ***academic average, AFPT, and leadership,*** having no bases to support their finding. ***Only when he the Battalion Commander was placed under pressure and six months later did he document his reasons*** . . . that is ludicrous.

(A). If there is inappropriate due process, by regulation: (B). OCS failure to document the reason(s) I was being recycled, prior to me being recycled; and (C). the Battalion Commander's written statement in which he indicated that he had to bring the school in line and allow for an appeal. Provides a legal base for my allegations.

The very same right that gives the Battalion Commander the right to recycle me, is the very same unmitigated right, in which I have, the access to appropriate due process; and if, I was not afforded appropriate due process by regulation, then I was not afforded appropriate due process by law! The questions are: are you willing and ready to uphold the regulation and law?

Thank You For Your Cooperation to This Matter.

Sheldon Lamar Hunt

cc.:
Honable [sic] Togo West
Secretary of the Army

November 18, 1996

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, New Jersey 07063-1409
(908) 561-7215

Honorable William J. Perry
Secretary of Defense
1000 Defense Pentagon
Washington, District of Columbia 20301-1000
Tel.: (703) 695-5261 Fax: (703) 697-9080

Dear Sir:

Hello my name is Sheldon Lamar Hunt, after one year three months and going though [sic] the chain of command, first starting with: The Inspector General's Office at Fort Benning, Ga. (Lt. Colonel John M. Dykes); The Office of the Chief of Staff at Fort Benning, Ga. (Colonel John R. Reitzell); The United States Army Doctrine and Training Command at Fort Monroe, Va. (Colonel Charles E. Beckwith IG); and The Inspector General's Office at the Pentagon, Wash., D.C. (Ms. A. Dale Culp), my situation has not been redress [sic].

On September 8, 1995 I was told that I had been recycled in The Officer Candidate School (OCS). The focal point of this matter is that, I was not given the right to rebut the recycling action taken by the Battalion Commander Lt. Col. Scott L. Armbrister and the Company Commander Captain David Cannon, as prescribed by regulation 351-14, Section III. I was not informed of my rights and given appropriated due process as it has been reported by Lt. Colonel John M. Dykes Inspector General, Fort Benning, Ga. 5Feb96.

Lt. Colonel Scott L. Armbrister OCS Battalion Commander acknowledges, that he did not follow the Recycle Appeal Policy, bringing OCS on-line with the rest of the infantry school. In his letter he certified to my home on 20March96. Only after, I had filed a complaint with Fort Benning's IG did the Battalion Commander document his reasons to recycle me, and not prior to the recycling action. This is very important; because, it solidifies my claim and tells of a system that does not have any respect for what is morally and legally correct.

The above Army Agencies are not willing to redress this issue, by enforcing the regulation. I was told by Ms. A. Dale Culp, that the act of being recycled or chaptering-out of the program was my due process. Her and many others' statements contradict the very same regulation that they swore to uphold, and that was set in place to provide protection under the law for an Officer Candidate to avoid a rush to judgment decision like the one made by the Battalion Commander such, as in this case.

As a soldier, a teacher of chemistry & physics, a taxpayer, and as an American Citizen, I call upon your officer to redress the appropriate due process issue. I was eight days away from being a Commission [sic] Officer, having completed the educational 83%, AFPT-280, and medical. The investigations have been completed and based on the evidence, I would like a commission as an Officer in the United States Army.

Sincerely yours

Specialist Sheldon Lamar Hunt

ATSH-TPC-B (351) 11 September 1995

MEMORANDUM THRU Commander, B Company,
3rd Battalion (OCS), 11th Infantry
Regiment, Fort Benning, Georgia 31905

FOR Commander, 3rd Battalion (OCS),
11th Infantry Regiment
Fort Benning, Georgia 31905

SUBJECT: Request for Disposition Prior to Graduation IAW Section V, AR 351-5, and USAIS Regulation 351-14, – OC HUNT, Sheldon L., 135-64-6678

1. Under the provisions of AR 351-5 and USAIS Regulation 351-14, I hereby submit my request for voluntary resignation from Officer Candidate School (OCS) Class 4-95, for the following reason(s).

a. ✓ Lack of Commitment
b. _ Lack of Adaptability
c. _ Personal/Compassionate/Hardship
d. _ Medical
e. _ Other

2. Reason(s) for request (print in black ink):

_____

_____

_____

_____

3. I understand that the reason I am being relieved will be entered on DC Form 185 (Record of Disenrollment from Officer-Type Training), retained by USAIS and Headquarters, Department of the Army for 5 years. In addition, a comment will be placed in my DA Form 2-1,

concerning my reason(s) for disenrollment which could adversely effect [sic] my chances for additional schooling or promotion. I also understand that once the company commander approves this request that IT IS IRREVOCABLE. I understand that I must re-apply for OCS IAWAR 351-5.

4. I make this statement freely and without coercion.

/s/ Sheldon Lamar Hunt
SHELDON L. HUNT
OC, USA

Jurisdiction Over The Subject Matter

The plaintiff Sheldon Lamar Hunt contends that this case is unique, that the defendants Armbrister, Cannon and Glenn acted independently of the military for their own interests, not in the interest of the federal government and the defendants should not have a right to sovereign immunity. The defendants were acting in direct violation of Army Regulation 351-5, as individual agents, not as a body of the federal government; and therefore, cannot be shielded from federal prosecution. The three defendants were clearly working outside military regulations, so they had to be working autonomously.

The defendants clearly knew what they were doing, by not affording the plaintiff his due process. How can they not know what they were doing, if they are the head an institution such as The Officer Candidate School? Moreover, how can the plaintiff defend himself, against several verbal statements? In this case the federal courts

have Jurisdiction Over The Subject Matter and have the obligation to act.

F-821 page, (1540)
The Supreme Court in Chappell continued by noting

> Our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes. [citation omitted.] This Court has never held, nor we now, that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service.

F-718 page, (929)
In Chappell v. Wallace U.S. 103 S.CT. 2362

> Implicit in the courts order of remand is the recognition that, in some situations at least, uniformed member of the Armed Service may assert that their constitution and statutory rights have been violated by their superiors.

The plaintiff has a right to due process and a hearing, even if he checked "lack of commitment", to resign. According to AR 140-50,

4-3 Relief and Retention of Candidate
Army Regulation 150-50/Update

a. Candidates attending OCS or OCRC who fail to demonstrate fitness for commissioned status will be relieved. School commandants (sates [sic] adjutants general for ARNG OCS) or their designated representatives

have relief authority. Each candidate's potential performance as a commissioned officer will be fully evaluated be relief (AWRY, para 5-3).

b. School commandants or their designated representatives will relieve candidates for – (1) disciplinary reasons. (2) deficiencies in leadership. (3) Security reasons. (4) Lack of motivation. (5) Falsification or omission of facts on applications. (6) Lack of adaptability. (7) Honor code violations. (8) Misconduct. (9) Academic deficiencies. (10) Disqualifying physical defects. (11) Physical deficiency. (12) Compassionate or hardship reasons. (13). Personal reasons. The school commandant or a designated representative will evaluate a candidate's request for relief for personal reasons. Members resigning without sufficient justification will be relieved for, "lack of motivation." Sufficient Justification will be determined by the school commandant or his or her designated representative.

c. School commandants will establish procedures for officer candidates to appeal a relief determination. His applies to candidates who have been relieved for one or more of the reasons listed in b(1) through (11) above. However, the provisions of AR 15-6 will not apply.

Spc. Hunt, should had [sic] been relief from duty, according to the above Army Regulation. The plaintiff resignation, should have been consistent with the above relief action(s). If the plaintiff cause of resignation was alleged to be "Deficiencies leadership," than the plaintiff should have been relieve [sic] for leadership and no other reason?

So, one can conclude that Spc. Hunt was under duress when signing his relief application. Lt. Col. Scott L. Armbrister, March 21, 1996 stated that, "My decision to recycle you to the next Officer Candidate School Class was based on your weak leadership performance,". Armbrister's actions were not in concert with the federal government's, because, he was directed by the regulations and failed to comply.

Board of Regents of State College
Et. Al. v. Roth page, (564)

Respondent brought this action claiming deprivation of his Fourth Amendment right, alleging infringement of (1) his free speech right because the true reason for his nonretention was his criticism of the university administration, and (2) *his procedural due process right because of the university failure to advise him of the reason for its decision.*

Board of Regent of State College
ET. Al. v. Roth page, (569)

The district Court granted summary judgment for the respondent on the procedural issue, ordering the university officials to provide him with reasons and a hearing 310F. Supp 972.

F-821 page, (1538)
Processing in the District Court

On April 30, 1986, General Hornsby moved to dismiss Stinson's complaint, asserting that the district court was without jurisdiction under Title VII because Strinson [sic] had failed to exhaust administrative remedies.

I. The plaintiff has exhaust [sic] all of his administrative remedies as follows:

A. Lt. Col. Scott L. Armbrister/Ft. Benning, GA.

B. The Inspector General's Officer/Ft. Benning, GA.

C. Chief of Staff/Ft. Benning, GA.

1. Col. John R. Reitzell, Office of the Chief of Staff

D. United States Army Training & Doctrine Command/Col. Charles E. Beckwith, Ft. Monroe, VA.

E. Chief of Staff/Col. Lawrence K. White, Ft. Benning

F. Secretary of the Army, Hon. Togo West, Washington, DC.

1. A. Dale Culp/Assistant Inspector General

2. Michelle Y. Cromwell

G. Secretary of Defense, Hon. William J. Perry

H. Army Board of Corrections

I. United States Senate/Hon. William (Bill) Bradley

J. J.A.G./Cpt. Baxer-White, Ft. Benning, GA.

The above are evidents [sic] that the plaintiff, Sheldon Lamar Hunt has exhausted all of his available administrative resources.

cc. Faith S. Hochberg
United States Attorney
Susan C. Cassell
Assistant U.S. Attorney
970 Broad Street, 7th floor
Newark, New Jersey 07102

DATE EVALUATED

RECORD OF DISENROLLMENT FROM
OFFICER CANDIDATE – TYPE TRAINING

TO: *(Appropriate agency of the service concerned) (Include Zip Code)*

THRU: Commandant USAIS
Commander USAIAPA
ATTN: DARC-OPP-P (Mr. Roland)
200 Stovall St., Alexandria, VA 22332

FROM: *(Appropriate agency of the service concerned) (Include Zip Code)*

Commander 11TH INF BN (OCS)
ATTN: ATSH-TP
Fort Benning, Ga 31905

SECTION I – IDENTIFICATION INFORMATION ON STUDENT AT TIME DISENROLLED

1. LAST NAME, FIRST NAME, MIDDLE INITIAL
HUNT, SHELDON L.

2. RATE OR GRADE
SPC

3. BRANCH OF ARMED FORCES
USAR

4. FILE OR SERVICE NUMBER

5. SOCIAL SECURITY OR ACCOUNT NUMBER
135-64-6678

6. BIRTH

a. DATE
08 JUN 63

b. PLACE
NEWMARK, NJ

7. SEX
MALE

8. HOME OF RECORD ADDRESS
405 CLINTON AVE
PLAINFIELD, NJ 07063

9. OTHER

SECTION II – PROGRAM INFORMATION
APPLICABLE AT TIME DISENROLLED

10. TRAINING STATION ADDRESS
B Co, 3/11th Inf (OCS)
Ft Benning, GA 31905

11. TYPE OF PROGRAM *(OCS, ROTC, Academy, NavCad, etc.)*
OCS

12. SPECIFIC TYPE OF TRAINING *(Illegible, Pilot-training, Bomberdier, Infantry, Artillery, etc.)*
BRANCH ILLEGIBLE

13. DATE ENTERED PROGRAM
18 JUN 95

14. DATE ENROLLED
11 SEP 95

15. DATE SCHEDULED FOR COMMISSION *(if training had been completed successfully)*

SECTION III – REASONS AND CIRCUMSTANCES FOR DISENROLLMENT

OC Sheldon L. Hunt was released From Class 4-95 for Lack of Commitment.

This release was approved by Commander 11th Inf, Regt., Ft Benning, GA.

Effective date of release is 12 SEPT 95.

SECTION IV – EVALUATION TO BE CONSIDERED IN THE FUTURE FOR DETERMINING ACCEPTABILITY FOR OTHER OFFICER TRAINING

1. [ ] *HIGHLY* RECOMMENDED

2. [ ] RECOMMENDED AS AN *AVERAGE* CANDIDATE

3. [ ] SHOULD NOT BE CONSIDERED WITHOUT WEIGHING THE "NEEDS OF THE SERVICE" AGAINST THE ILLEGIBLE FOR THIS DISENROLLMENT

4. [ ] RECOMMENDED IF PHYSICAL DEFECTS ARE CORRECTED OR IF SUCH DEFECTS ARE ILLEGIBLE QUALIFYING FOR OTHER PROGRAMS

5. [X] *DEFINITELY NOT RECOMMENDED*

6. [ ] OTHER REMARKS

REMARKS
CF:
HQDA (DAPC-OPD-PA)
ATSH-SE-ARD
ATZB-AG-PB

TYPED NAME AND GRADE
SCOTT L. ARMBRISTER, LTC, IN, Commanding

SIGNATURE
/s/ Scott L. Armbrister

APPENDIX 14

EARL G. KAUFFMAN, ESQUIRE
LL.M. IN TRIAL ADVOCACY
PA ATTORNEY I.D. NO. 40726
THE BOURSE BUILDING, STE 585
111 S. INDEPENDENCE MALL EAST
PHILADELPHIA, PA 19106
(215) 625-2708
FAX (215) 625-3998
E-MAIL: theatty@bellatlantic.net

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SPECIALIST SHELDON LAMAR HUNT, PRO SE,	:	
Plaintiff,	:	CIVIL NO.
vs.	:	97-4 (DRD)
LT. COLONEL SCOTT L. ARMBRISTER, et al.,	:	
Defendants,	:	

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Specialist Sheldon Lamar Hunt, Plaintiff, appeals to the United States court of Appeals for the Third Circuit from the final judgment of the district court for the district of New Jersey, entered in this case on April 29, 1997, see attached Order.

Date: June 16, 1997 /s/ Earl G. Kauffman
Earl G. Kauffman, Esquire
Attorney for the Appellant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SPECIALIST SHELDON LAMAR HUNT,	:	
Plaintiff,	:	CIV. NO.
v.	:	97-4 (DRD)
LT. COLONEL SCOTT L. ARMBRISTER, et al.,	:	ORDER
Defendants,	:	(Filed Apr. 29, 1997)

This matter having come before the Court on a motion of Faith S. Hochberg, United States Attorney for the District of New Jersey, (Susan C. Cassell, AUSA, appearing), attorney for defendants, for an order dismissing the complaint; and plaintiff, Sheldon Lamar Hunt, having appeared in opposition to the motion; and the Court having considered the matter, and the papers submitted by the parties, and for good cause shown;

IT IS, on this 28th day of April 1997, ORDERED that the defendants' motion is granted, and the action be and the same is hereby dismissed with prejudice.

/s/ Dickinson R. Debevoise
Dickinson R. Debevoise,
U.S.S.D.J.

CERTIFICATE OF SERVICE

I, Earl G. Kauffman, Esquire, do certify that a true and correct copy of the foregoing Notice of Appeal has been sent by first class mail on June 16, 1997, to be filed with the Clerk of the United States District Court for the

District of New Jersey, 50 Walnut Street, Newark, NJ, 07101, and copies delivered by first class mail to the following:

The Honorable Dickinson R. DeBevoise
United States District Court Judge
Martin Luther King Jr. Federal
Building & Courthouse
50 Walnut Street
Newark, NJ 07102

Susan C. Cassell, AUSA
970 Broad Street, Rm 700
Newark, NJ 07102
For Defendant/Appellee

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, NJ 07063-1409
Plaintiff/Appellant

Date: June 16, 1997 /s/ Earl G. Kauffman
Earl G. Kauffman, Esquire

APPENDIX 15

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

August 18, 1998

Sheldon Lamar Hunt
405 Clinton Avenue
Plainfield, NJ 07063-1409

RE: Sheldon Lamar Hunt v. Scott L. Armbrister, et al.

Dear Mr. Hunt:

Returned are 9 of 10 copies of your petition for a writ of certiorari, postmarked August 15, 1998, addressed to the Solicitor General, Department of Justice, received and X-Rayed in that office on August 17, 1998, forwarded and received in the Clerk's Office the same date in the above-entitled case. This petition fails to comply with this Court's Rules of Procedure, a copy of which is enclosed. Also enclosed is a sample petition which you may follow as to form.

If it is your intention to pay the docketing fee, it will be necessary for you to submit 40 typeset copies of your petition and appendix on paper size $6^1/_8$ x $9^1/_4$ inches, 11 point or larger typeset, 2-point or more leading between the lines, double sided, with at least a $^3/_4$ inch margin on all sides. Questions presented must appear directly after the cover page and not a second cover page, followed by list of parties, table of contents and table of authorities.

These are unnumbered pages and you should use i, ii, etc. Rule 33.1.

Opinions below should appear on the first page of the petition followed by jurisdiction, constitutional provisions and statutes, statement of the case, reasons for granting and conclusions. These pages should be numerically numbered. The U.S. Court of Appeals for the Third Circuit has confirmed that your rehearing was denied on May 19, 1998, which should be included in the appendix to the petition. Three copies of the petition must be served upon the Solicitor General and proof of service should be submitted as a separate document with the petition. Rules 33.1, 14, and 29.4. The names of the judges should be omitted from the cover, and the tabs should be removed. Spiral, plastic, metal, and string bindings may not be used. The document shall be bound in at least two places along the left margin (saddle stitch and perfect binding preferred). Rules 34.1 and 33.1.

Corrected copies must be received in this office no later than 60 days after the date of this letter in order to be timely filed. Rule 14.5. Rule 29.2 is not applicable.

Sincerely,
William K. Suter, Clerk
By: /s/ Loretta S. Ruffin
Loretta S. Ruffin
(202) 479-3039